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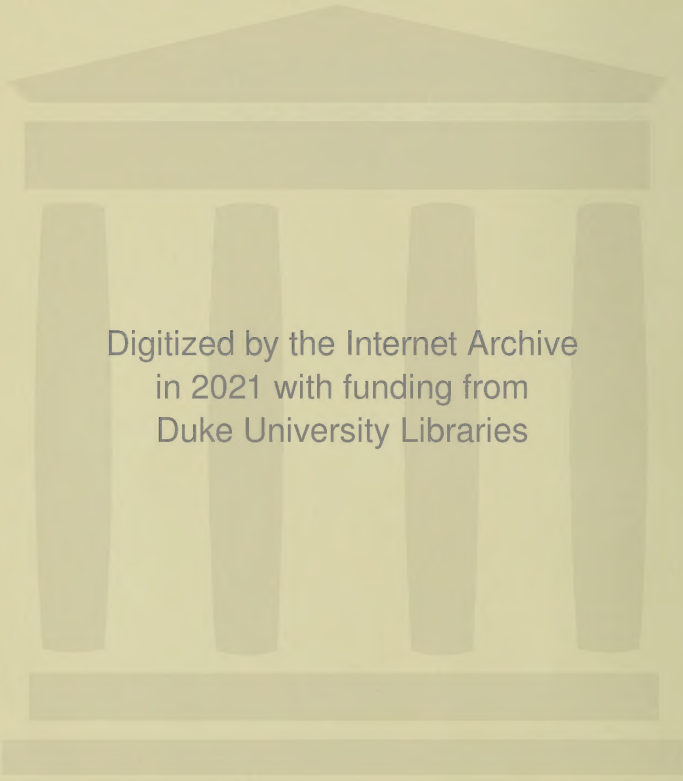






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# THE DUKE UNIVERSITY CENTENNIAL CONFERENCE ON TEACHER TRAINING

EDITED BY

WILLIAM H. CARTWRIGHT

AND

WILLIAM B. HAMILTON



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## FOREWORD

A. HOLLIS EDENS  
*President of Duke University*

THE occasion for this conference was the one hundredth anniversary of the chartering of the institution which is now Duke University as a college for the training of teachers. That early college, Normal College, may well have been the first degree-granting institution in the nation which was organized for the express purpose of the education of teachers.

While Duke University is proud of its heritage from Normal College, we are looking more to the future than to the past. We are rededicating ourselves to the cause of public education. We have already taken significant steps toward improving our service to the schools. Several new members have been added to the Department of Education. A doctoral program in public-school administration has been inaugurated. Last summer we started a program of summer-session scholarships for public-school teachers. We are taking measures to maintain professional contact with our graduates who enter the teaching profession. Our summer conferences for teachers of mathematics and the laboratory sciences have drawn what we believe is well-deserved praise from teachers and administrators alike.

It has been the tradition of Duke, under the leadership of educators like Braxton Craven, John C. Kilgo, and E. C. Brooks, to consider the education of teachers the responsibility of the entire University, not of just one or two departments. This tradition continues to guide our policy. The recent additions to our programs which I have mentioned were co-operative undertakings, planned and carried out with the support of many departments. During the past year a committee representing twelve departments of the University has been developing a plan for the reorganization of graduate work for teachers. Other interdepartmental committees have been at work on specific problems relating to Duke University and the public schools.

The administration and faculty at Duke believe that the private college and university can make an effective contribution to the public schools. Especially in these times when there is a critical

shortage of teachers we feel an obligation to devote increasing efforts to training personnel for the nation's schools. We invited leaders in public education to this conference to help us think through the problems involved in making our contribution to the schools most effective. We appreciate their coming, and we shall continue to ask their advice and assistance. We have confidence that, with their co-operation, Duke University will provide useful and substantial services, in growing measure, to the public schools which Normal College was organized to serve.

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THE DUKE UNIVERSITY  
CENTENNIAL CONFERENCE  
ON  
TEACHER TRAINING

The "Conference on Teacher Training in the Private College and University" was held on June 24, 25, and 26, 1952, in commemoration of the centennial anniversary of the re-incorporation of Duke University's parent institution under the name of Normal College.

The committee that arranged the conference was headed by

Dr. John W. Carr, Jr.

*Professor of Education in Duke University*

The following educational leaders not represented by papers in this publication presided over various functions of the Conference:

Charles E. Jordan, *Vice-President of Duke University*

Everett Spikes, *Superintendent of the Burlington City Schools*

Carlyle Campbell, *President of Meredith College*

M. E. Yount, *Superintendent of the Alamance County Schools*  
and *President of the North Carolina Education Association*

John J. Gergen, *Professor of Mathematics and past Chairman*  
*of the Curriculum Committee of the Faculty Council,*  
*Duke University*

A. S. Brower, *Business Manager and Comptroller of Duke*  
*University and Member of the State Board of Education*



# DUKE UNIVERSITY AND THE SCHOOLS THE FIRST CENTURY\*

WILLIAM B. HAMILTON

*Professor of History in Duke University*

IN THE winter of 1839 North Carolina wrote down its first common-school law and the Quakers and Methodists of Brown's Schoolhouse community in Randolph County organized Union Institute Academy, the ancestor of Duke University. Purely fortuitous, the coincidence nevertheless presaged a working partnership between a private institution and the schools. The progenitors of Duke University had, indeed, a natural affinity with the public schools. Time and again the institution proclaimed as its especial mission the education of that element in society less endowed with lineage and fortune. President John F. Crowell attributed its success and its appeal to the philanthropy of the Dukes to "this element of fidelity in the history and character of the College to the interests of popular life." If it were not for the debasement of meaning certain words have suffered in our Orwellian times, it could be reported that another president spoke of the institution as a "people's college."

When it claimed to have advanced from an academy to a college, the institution was specifically designed to train teachers for the

\* This essay was drawn from the following: Dean Nora Campbell Chaffin, *Trinity College, 1839-1892: The Beginnings of Duke University* (Durham, N. C., 1950); an unpublished paper on the history of Trinity College, written in 1922, by Mr. William T. Laprade, Professor of History in Duke University; John Franklin Crowell, *Personal Recollections of Trinity College, North Carolina, 1887-1894* (Durham, N. C., 1939); Bishop Paul Neff Garber, *John Carlisle Kilgo, President of Trinity College, 1894-1910* (Durham, N. C., 1937); extant MS minutes of the Board of Trustees and of its executive committee, 1890-1924; Trinity College Papers in the MSS Division, Duke University Library; the catalogues of Trinity College and Duke University and the printed reports of the president and other officers of the institution; data furnished by Mr. Benjamin L. Smith, Superintendent City Schools, Greensboro, North Carolina; James E. Hillman, *The Story of Teacher Education and Certification in North Carolina*, mimeographed, January 23, 1953; data furnished by Mr. B. G. Childs, Professor of Education in Duke University; Edgar W. Knight, *Public School Education in North Carolina* (Boston, 1916); M. S. C. Noble, *A History of the Public Schools of North Carolina* (Chapel Hill, N. C., 1930); A. L. Brooks and H. T. Lefler, eds., *The Papers of Walter Clark* (Chapel Hill, N. C., 1948); Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894-1901* (Chapel Hill, N. C., 1951); Josephus Daniels, *Editor in Politics* (Chapel Hill, N. C., 1941); William K. Boyd, *The Story of Durham, City of the New South* (Durham, N. C., 1927).

This paper, inserted for historical background, did not form a part of the proceedings of the conference.

common schools. Although its resources sometimes fell short of its ambitions and its faith grew weak for a period, it ultimately made contributions to public education which were not insubstantial. The story follows two courses, not always parallel. One is the policy of North Carolina, in whose soil the college grew, toward public education. Another is the growth of the college, a growth compounded of vigorous leadership, the courage to be different, advanced standards of scholarship, and the financial strength with which to implement its virtues.

Still sound for Duke University is the battered old saying that an institution is but the lengthened shadow of one man. The man in this case was Braxton Craven, who became principal of Union Institute in 1842 and who singlehandedly held his little school together until his death sixty years later. Craven foreshadowed many of the twentieth-century developments in his college, but in no field did he move with more vision or more vigor than in that of public education. A contemporary of Horace Mann, he was a tireless preacher for the cause of common schools. To his country study he drew the current international literature on the subject; and by 1848, having already turned out some teachers in the academy, he was ready to institute formal training for teachers.

The normal-school movement had seized on the country in the 1830's; Craven thought there should be one in North Carolina. He wrote a bill to incorporate Union Institute as Normal College, with state support and county-financed scholarships. The state legislature refused support by any governmental unit, but did grant Normal graduates the chartered privilege of certification without examination. All students entering the college were required to declare their "intention to devote ourselves to the business of teaching common schools in the State of North Carolina, and that our sole object in resorting to this Normal College is the better to prepare ourselves for that important duty."

In a further vain attempt to secure state support, Craven joined with the Baptists of Wake Forest and the Presbyterians of Davidson College to urge the legislature to establish scholarships for training teachers at all three colleges. But he did procure an amended charter in 1852 which in effect made Normal College a state school, providing that the governor should be ex-officio head of the board of trustees and "the common school superintendent, should such an officer exist," its secretary and that the college should report at each session of the legislature upon not only its own condition but

also education of teachers in general. The tangible support by the state, however, consisted only of a loan of \$10,000 from the Literary Fund, at 6 per cent. Craven ultimately paid back this loan himself.

The act of 1852 likewise empowered Normal College to grant academic degrees, so that some such priority as the first teacher-training institution empowered to grant a degree to its students can probably be assigned to the institution. Unfortunately, except for the merit of pioneering in good intentions, the less said of the fruits of Normal College, the better. The catalogue from 1850 to 1854 boasted of affording not only subject matter but methods of teaching, and of the presence of a practice school of small children, for supervised teaching. But the fact was that Craven's venture was a failure. He apparently got support from nobody, least of all from Calvin H. Wiley, a name revered in the public-school legends of the state. Craven recognized that his products, though they bore the name of college men, were but poorly educated, and some of the criticism of teachers trained at Normal was justified.

Craven gave up his hopes of tax support, dropped his normal studies, and secured the sponsorship of the Methodists; in 1859 the name of the college was changed to Trinity. He never flagged, however, in his fundamental and abiding zeal for public education. His influence was always thrown on the side of the few who kept up the battle throughout the nineteenth century for a system of common schools; this movement appealed to an experience and a philosophy which united to convince him of the nobility and the immortality inherent in the profession of teaching. In the dark days of Reconstruction and in the hopeful days of the restoration of home rule his voice was lifted in behalf of teacher education, educational publications, and educational organization of the state. Trinity graduates of course went into the teaching profession; the alumni lists show as many teachers from the graduates of the 1870's as from those of the days of the Normal College experiment. In his last years Craven conducted one more formal effort at teacher training. In response to a plea from Governor Vance, the University of North Carolina in 1877 established a summer normal, financed by the Peabody Fund and the state. Out of his meager resources, Craven followed suit. A Summer Normal School was organized and conducted in 1878 and 1879, with attendances of 200 and 184.

The idea of technical teacher training seems to have carried over into the regime of Craven's successor, John F. Crowell, after an interregnum. Crowell's first prospectus listed a "Normal Department." This man, a Yankee trained at Yale, understood the signs of his times. He came to a South bewildered by poverty and political obsessions, saddled with its mythology about the past, and set briskly to work to adjust Trinity College to the fast-moving forces of economic change, which he quite understood. It is significant that one of his dreams was the establishment of an institute of technology. It is symbolic that he transplanted the college from rural Randolph County to the new industrial town of Durham, dragging it into the twentieth century a decade ahead of time.

The public-school system, Crowell thought, was the only institution that could equip an increasing population to deal with the increasing complexities of social and economic problems. He advocated taxation of the richer areas of the state to educate the children of the poorer districts. In *A Program of Progress: An Open Letter to the General Assembly of 1891*, the first of a number of specific proposals Crowell laid down was: "Increase Progressively the Appropriations for Public Schools." There were signs that his strong position had some small immediate effect, as well as adding its strokes to drive the pilings on which North Carolina would presently build.

But the state did not move fast enough for Crowell's temperament, and in the meantime Trinity had to have students who had been prepared for college. The better of the private schools, such as Bingham's at Mebane and that of the Holt brothers near Greensboro, did not, according to Crowell, devote themselves to preparatory work. The public graded schools did, but there were so few of them adequately equipped: Winston, Raleigh, Wilmington, Charlotte, Greensboro, Goldsboro, Monroe. In fact, there were large communities of potentially able citizens without any educational facilities at all.

Crowell turned to the development of a scheme that Craven had recommended in 1875, a system of district Methodist Conference academies and high schools, which should serve as feeders for Trinity College. In Crowell's fertile mind the idea pointed eventually toward a chain of junior colleges feeding a modern university. He saddled his horse and made many a wearisome ride into isolated sections to do missionary work for education. A sample is his description in his *Recollections* of a thirty-seven-mile ride from



North Wilkesboro to look into the resurrection of a school at Jefferson City.

When the college was moved to Durham, some of the faculty remained behind at old Trinity, which, as a high school, was the principal member of Trinity's chain of schools in the 1890's. It was also one of the principal troubles of the college's Board of Trustees, involving not only psychological and personality problems—you had after all left aching roots when you tore loose the institution—but also financial difficulties. Trinity, in spite of an announced policy to the contrary, had of course to subsidize Trinity High School from time to time. The latter, by gradual evolution, illustrated the changing base of preparatory schooling to which the college adjusted. It slowly turned into a public school. In 1897-1898, of considerably over a hundred pupils, fifteen were public-school children, for whom Randolph County paid the school \$70. Eleven years later the old lingering ties were cut; Trinity was deeded to Randolph County for a public school.

Others of the Trinity chain of schools in the 1890's were the academies of Burlington, Richlands, Hartland in Caldwell County, and Jonesboro. Of these little is heard in the minutes of the Board, the announced policy of which was to name principals and textbooks, to receive graduates of these schools into Trinity College without examination, and to appropriate no money to their support. Of Morven Academy, in south Anson County, and of Pilot Mountain, east of Mt. Airy, there is more frequent mention in the minutes. Reports to the Board were received, and principals were elected. Trinity College bought desks and blackboards for Pilot Mountain. In June of 1897 the Board of Trustees approved a motion to deed that academy to trustees appointed by the Quarterly Conference of Pilot Mountain Circuit, but a year later it was still receiving the annual report of the school.

There is no evidence that these feeder schools fulfilled their function for Trinity College, not even old Trinity. Of the 174 students in the college in 1901-1902, there were only eight from all the Methodist Church schools in North Carolina, two of them from old Trinity. Trinity College had in July of 1898, in order to have freshmen adequately prepared for a college with its standards, established with money from B. N. Duke a preparatory school on its own campus. This school, called Trinity Park School, functioned to the satisfaction of the college, and it was discontinued in the summer of 1923 only when the growth of the college caused it to need the



buildings and when the public schools had begun to furnish sufficient numbers of freshmen.

The public schools of North Carolina had burgeoned wonderfully in a generation, and Trinity College's hopes for them and her share in building them had naturally evolved in close response to the educational politics and legislation in the state. In 1894 John C. Kilgo had become President of the college—a man of little formal learning who greatly increased the quality of learning and respect for it wherever his influence was exerted; a breeder of controversy and a lover of fights who stilled the attacks on Trinity College; a man of strong opinions and quick temper who welded the Trinity faculty into a loyal and able team and did more for academic freedom than any other individual in his region. As might be expected, this paradoxical figure, holding a skeptical and grudging attitude toward the public schools long after they had proved their usefulness, took measures that were of more practical and fundamental assistance to the rise of public education than all the efforts of all the members of Trinity College before him.

In the 1890's, before real support was won for the common schools of the state, Kilgo joined the Baptists in strong advocacy of longer terms and more state appropriations for them. In 1896, "against desperate opposition from politicians," he later asserted, "and from all the political papers of the state," he procured the passage by the North Carolina Conference of a resolution declaring free public schools a necessity and favoring a sufficient tax to operate them six or eight months a year. At the Commencement meeting in June of 1897 he and the Board of Trustees adopted the following resolution proposed by Judge W. J. Montgomery and W. R. Odell:

"Whereas, The trustees of Trinity College are now, and have ever been heartily in favor of Free Public Schools, & also of Higher Education—

"Therefore Resolved, that we pledge ourselves to renewed efforts to lengthen the terms & to so increase the number & efficiency of said Free Schools as that every child in the State shall have the opportunity of acquiring an education."

This stand was taken by the college despite such feeling as that expressed by the Chairman of the Board, that he would contribute to the education of paupers, but that it was not right, it was socialistic, to tax one man to educate the children of another.

In 1899 Kilgo was a proponent of an appropriation of \$100,000 from state funds, to be dispensed according to school-age population

to lengthen the school term. In pamphlets and speeches Kilgo supported the cause of public education. Unfortunately, the suspicion was aroused that his motive was not altogether passion for universal education. When Kilgo came to the state he found that the Baptists had already begun a fight against free tuition at the state colleges, especially the University at Chapel Hill. Kilgo jumped into the fight with relish. Christian education in a denominational but not sectarian college was of course the best education. The Christian colleges were fighting for their financial lives, and the state was competing with their business in an unfair way. That was socialism. He and Josiah W. Bailey, editor of the *Biblical Recorder*, waged an all-out campaign against appropriations for the University. Both the resolutions referred to above were coupled with pronouncements in favor of Christian *higher* education. In the hot campaign of 1898 the Democratic party was exerting every effort to turn out of office the Fusion of Populists and Republicans. To insure support of the Baptists and Methodists former governor Thomas Jarvis and Furnifold Simmons, the manager of the campaign, promised the denominational colleges that there would not be an increase in the appropriations for the state colleges during the 1899 session. The presidents of the University and of the Woman's College at Greensboro drew the conclusion that advocacy of the 1899 appropriation for the common schools was designed simply to drain off funds that might have gone to them.

One of Kilgo's laudable policies that affected the high schools was the raising of entrance requirements. Beginning in 1895, in a rapid series of regulations, Trinity College raised its standards of admission, in collaboration with Vanderbilt and Tulane universities. It joined in forming the Southern Association of Colleges and Preparatory Schools in 1895. Although it lost students by its policy, Trinity did not retreat. In 1898 the faculty issued a pamphlet entitled *Requirements for Admission and Suggestions to Teachers of Secondary Schools*. A freshman in Trinity must be fifteen years of age and must stand examinations on subjects that would furnish just about a full high-school course. In 1906 the Carnegie Foundation said the college had admission requirements second only to those of Vanderbilt in the South; two years later Trinity raised the required number of high school credits to the full fourteen "Carnegie units" and the admission age to sixteen.

Both Kilgo and his successor as President, William P. Few, realized that such lofty standards did not win friends for the college.

Few said it limited our direct influence upon the state for years. But, said Kilgo, in a statement typical of the philosophy that is his chief glory:

Trinity College has a distinct place as a leader in the educational progress of this section of our country. In every movement to advance the standards of education it has taken a leading position. For this reason many have charged it with not having due sympathy with the public sentiment and ideals. Its policies have been criticized as out of harmony with the traditional wishes of the people. It is not the aim of Trinity College to conform to sentiments because they are popular, but to transform sentiments to higher ideals. . . . A faithful college must go ahead of the people. . . .

Both Kilgo and Few repeatedly pointed out that Trinity's admission standards made decent high-school work both possible and necessary and were thus a fundamental step in encouraging the building of the high school. "In the way of purely educational reform," Few wrote in 1913, "it was the most valuable service the College ever rendered the State."

The Democrats of North Carolina thought it desirable, in 1900, to make permanent the victory of 1898 by disfranchising the Negro. They proposed to carry a constitutional amendment to refuse the suffrage to illiterates. They began to find it wise, to secure white votes in the West, to couple their pleas for votes for the amendment with promises of a statewide four-month minimum school term. Thus a strong political motivation added its force to the growing agitation for public schools long conducted by those with other motives. Thus Charles B. Aycock swept into the governorship on a platform pledging the wealth of the state to universal education. The appropriation of 1899 was doubled in succeeding years. A high tension propaganda and revival campaign was instituted in 1902, with Aycock, Charles D. McIver, James Y. Joyner, and others as the orators in the four corners of the state. For Executive Secretary, to do the work, there was chosen Eugene Clyde Brooks, an alumnus of Trinity, class of 1894, then Superintendent at Monroe. The days of real struggle were soon over. The job was to **man—or** woman—the hundreds of new classrooms. In 1907, for example, the state passed legislation encouraging the establishment of rural high schools, two hundred of which sprang up in the next five years.

Trinity College, although giving no formal technical training for teachers, had continued to furnish instructors to the schools. Between 1894 and 1900, to give a figure, a third of the graduates went into teaching. But in the spring of 1907, prodded by some

wisdom whose origins are not known, Kilgo wrote to Brooks, by then Superintendent of the Goldsboro Public Schools, asking counsel on the establishment of a department of education at Trinity. "I believe if Trinity College takes this move," Brooks replied, "and she will sooner or later, that it will be the most important step taken by this institution since it was moved from Randolph County." He himself would not come for the salary mentioned; he was currently making \$2,000.

Evidently the remuneration was satisfactorily settled. Brooks in the fall of 1907 became Professor of the History and Science of Education. Trinity was fortunate in her selection; perhaps rather than trying to analyze here the qualities of this man of many talents in human relations, it will suffice to make the statement that he gave the college a pre-eminence throughout the state in teacher training for many years. His first immediate success came when he set up the first extension work in any department of education in North Carolina. In his first year he offered Saturday lectures for the teachers of Durham County, in which he was assisted by his colleagues in the subject fields: Few and Edwin Mims in English, William K. Boyd in history, were among them. In 1909 he set up a progressive course for teachers which the State Superintendent of Public Instruction permitted to take the place of the old county institute and of summer schools. The Durham City Schools joined in the scheme, and the Superintendent, W. D. Carmichael, himself gave a course for several years. "A good many teachers from other counties," Few reported in 1912, "come into Durham to take this course with the Durham county teachers. Superintendent S. B. Underwood, a Trinity graduate, now superintendent of the Kinston schools, has arranged with the Superintendent of Lenoir County to organize similar work for that county next year." In the same year the instruction was extended to Orange, a county adjacent to Durham. From 1910-1911 to 1920-1921, in order to formalize the training of teachers in service, something by the grandiose name of the "School of Education" was put in the catalogue. It was to give high-school graduates with teaching experience ten hours of subject matter and eight of technical.

In the college classes themselves Brooks began to inspire a whole generation of schoolmen. In his first year his department had six students; in 1910-1911 there were 88, in addition to 74 county teachers in the Saturday extension; in 1922 Professor William T. Laprade found more students in the education classes than the



college had had in all its classes in 1900. Few reported in the same year that of 6,500 alumni, more than 1,000 had been teachers, most of them in the public schools. It would be impractical, therefore, to succumb to the temptation to name alumni who have been prominent in the great field of education, as easily as that would serve to make the point that Trinity College has bred public servants of distinction. Laprade, for example, as long ago as 1922 counted more than forty alumni in the roster of county superintendents. Perhaps the point might be suggested by saying that the following, many of them of the vintage of Brooks, are among the alumni of Trinity and Duke: the State Superintendent of Public Instruction; the Controller, the Director of Division of Instructional Service, and the Director of the Division of Special Education, in the State Department of Public Instruction; the superintendents in the cities of Kannapolis, Laurinburg, Albemarle, Hickory, Morganton, Mt. Airy, Greenville, Raleigh, Greensboro, Burlington, and Durham, among others; and the superintendents in such counties as Wilson, Pitt, Bertie, Dare, Davidson, Granville, Cleveland, Duplin, Alexander, and Davie. The builder-president of George Peabody College, so influential in the South, from an older generation, and the principal authority on the history of education in the South, from the class of 1909, might be adduced as further samples.

Of claims to merit from service to the public-school system, which he had set on foot, Kilgo had only a glimmer. In his last report he was still grumbling. The public high schools were diverting their interests to the ends of vocations and of "propagandism." The colleges would still have to look for students to the private preparatory schools. His successor Few, who had for years been making statesmanlike pronouncements in behalf of public education of the masses, immediately struck a different note. "Trinity College will always throw itself unreservedly into the doing of the supreme duty of the hour," he said in his inaugural address, November, 1910. "A while ago it was at any cost to break the shackles of politics and traditionalism. Today it is to put within reach of every child the opportunities of the elementary school, the grammar school, and the high school." Few took pride in the accomplishments of Brooks; it was a rare annual report in which he did not boast to the board of the Department of Education, and he gave sympathetic attention to such problems of the public high schools as the squeeze they were caught in between the demands of college



entrance requirements and the vocational and sociological needs of their communities.

The chief measure to advance teacher training that was started in Few's administration was the summer session. Like all worthwhile enterprises in the institution, premonitory hints go far back in its history. We have seen Craven's summer normals in operation. In 1894 a summer school for preachers was proposed in a meeting of the Board of Trustees. Few's report for 1913 spoke of the need for a summer school for teachers and a preachers' institute. In the summer of 1918 a ten-day session for preachers was held. Another forerunner of a summer session was the maintenance for many years of classes in chemistry for students not fully prepared to enter medical schools.

The impetus for the first formal summer session came from William K. Boyd, a mover and a shaker. A picture suggested by Holland Holton in 1940 rings true. He recalled that Few mentioned to him, in the winter of 1918-1919, that Boyd "was renewing with considerable insistence the suggestion that Trinity College open a summer school." Boyd was a man who could have seen the general utility of such a session; in addition he had been in charge of collegiate instruction in the Student Army Training Corps in the late war and perhaps thought of the necessity of an accelerated program for students whose work had been interrupted. At any rate Trinity held its first six weeks' summer session in 1919 under the direction of a faculty committee of which Boyd was chairman. From 1921 until his death in 1947 Holton was Director of the Summer Session. The enrollment was small at first, and the quality of the work always high, for the same reasons: Trinity was the first of the larger schools in the area to put summer instruction of teachers on precisely the same basis as instruction in the regular year. The college had not been conducting one of the old summer institutes, and so had no clientele unfit for college. Further, its requirements were considered "more unreasonable" than those of most summer schools.

As far as teacher training went, however Trinity College had begun its summer session at exactly the right time. In 1917-1918 certification requirements shifted in North Carolina from emphasis on examination toward emphasis on credentials representing college training. The requirements moved in the decade of the twenties toward a college degree in secondary teaching, and elementary teaching followed in the thirties. The enrollment in the first session

was 65. The number of North Carolina teachers mounted steadily until most of the state teachers of any ambition had fulfilled requirements for advanced certification. The North Carolina peak was probably 1926, when there were 1,113 public school teachers in a twelve weeks' session. The contribution of the Duke Summer Session to the improvement of the professional training of North Carolina teachers can be measured by several indexes. From 1924 to 1927 the school maintained a branch at Oriental, in Pamlico County, where it trained from 128 to 162 teachers each summer. By 1926 Durham and Pamlico counties had the highest proportion of trained teachers by the state department's rating. A branch of the summer session at Lake Junaluska, from 1926 to 1931, pulled Haywood County's rating up considerably from ninety-second place.

A large proportion of the summer-session work after Duke University was well established was postgraduate, and for a while at least well over half the graduate work, of teachers as well as others, was done in academic subjects other than education. Still, the emphasis of the summer session on teacher training can be adjudged by the report of the Dean of the Graduate School in 1938 that in a decade the University had conferred 112 Master of Arts degrees in education and 165 M.Ed. degrees. The nearest approach from the subject fields was 163 Master of Art degrees in English.

When the saturation point had been reached in North Carolina, Holton drew in teachers from Florida, Georgia, South Carolina, Virginia, West Virginia, New Jersey, and Pennsylvania in large numbers. In 1938 the total enrollment in the Summer Session was 3,513, of whom 2,484 were teachers in the public schools. The Summer Session had become the institution's most important contribution to teacher training in its region. The Second World War of course disrupted that activity and dissipated the clientele of the Summer Session, which had served to fulfil functions enjoined upon Trinity College by the Duke Indenture.

When Brooks became State Superintendent of Public Instruction in January of 1919, the college fumbled a bit in the handling of its historic function. It had in harness no adequate apprentice. In October of 1921 the Alumni Council, moved by F. B. Underwood, was alarmed enough to petition the Board for an addition to the Department of Education. But after two years Holland Holton was made Chairman of the Department of Education. Holton was of the class of 1907, had read law, assisted in economics, lectured in

education, and served as Durham County Superintendent of Education.

Few's last report as President of Trinity College contained this passage:

I only wish to add here how anxious I am to see the constant expansion of our department of education, of which the summer school is a strong arm, and how appropriate I feel it would be for us to develop here a great Teachers College as a full realization after all these years of the splendid vision of Braxton Craven.

It was surely this attitude, as well as the independent thought of James B. Duke, that was reflected in the indenture of trust signed on December 11, 1924, setting forth Duke's wishes for the University that was to be built around the old college. One of the schools he hoped the University would include was "a School for Training Teachers," and his advice was "that the courses at this institution be arranged, first, with special reference to the training of preachers, teachers, lawyers and physicians, because these are most in the public eye, and by precept and example can do most to uplift mankind . . . ." The commonest surmise as to what happened to the aspirations of Few and Duke in 1924 is that the success of the Summer Session in training teachers made it seem unnecessary to give stringent attention to the organization of large facilities for the purpose in the regular structure of the University.

Finally, attention should be drawn to a strong thread that runs through the entire history of the institution's relation to education in the schools. It is that of publication on the subject, an enterprise which is useful in stimulating thought and action and in disseminating information. Craven, who always advocated publication for the advancement of education, began, in May of 1850, with Reuben H. Brown, the *Southern Index*, a bimonthly devoted principally to the cause of public education. In the fall the name was changed to *Evergreen* and under that name lasted a few more months. Craven was connected with the launching of the *North Carolina Journal of Education* in 1858.

In the early 1880's J. F. Heitman, class of 1868, published the *North Carolina Educational Journal*. After he began his long tenure at old Trinity, that journal was published at Trinity from October 1, 1883, to its death in December, 1885, and students and faculty at the college contributed to it. John F. Crowell had elaborate ideas about publication, and sought to spread the reputation and influence of the college by a quantity of printing. One of his

schemes grew out of a connection which he formed in 1889 with W. A. Blair, principal of the Winston High School, and owner of the *School Teacher*. About 1890 Crowell drew Henry Seeman, a printer in Durham, into an association called the Educator Company, one of whose functions was to print the magazine, under the new name of the *Southern Educator*. Crowell was president of the company; Governor Thomas J. Jarvis vice-president; Blair secretary; B. N. Duke treasurer; and Julian S. Carr, P. P. Claxton (himself an early publisher in the field), and J. H. Southgate were directors. Under the editorship of E. S. Sheppe the magazine collapsed about 1895, the company collapsed financially, and Seeman returned to printing tobacco tags and other practical things, still fortunately not cured of his desire to be a publisher.

The faculty of Trinity College, not cured themselves, published under Kilgo's drive the *Christian Educator*, from 1896 till 1898, a monthly paper which cannot be claimed as part of the tradition of printing on school problems. It was really just a house organ for Trinity College and for Kilgo's fight on the public colleges. In 1902, however, John Spencer Bassett and his colleagues began the *South Atlantic Quarterly*. While certainly not designed to specialize in educational problems, this quarterly in its early days presented scarcely an issue in which there was not some hard-hitting article on the problems of Southern education. The thoughts of Kilgo and Few on the common schools, as well as those of others, found expression in the *South Atlantic*. And Edwin Mims points out that under his editorship the *Quarterly* served, from 1905 to 1909, as an unofficial organ for the Ogden movement, the Southern Education Board, and the Southern Conference for Education, all parts of the same movement that was profoundly influencing secondary education in the entire South.

Brooks had begun, in September of 1906, the *North Carolina Journal of Education*, which was in effect the official teachers' journal in North Carolina until the NCEA actually bought it about 1923. When Brooks came to Trinity College he brought his journal with him; and Henry Seeman was from the beginning to 1909 its financial manager and printer. Through this journal, and especially through a readers' circle that Brooks conducted in it, the profound influence of Trinity on public education was extended.

Among the publications on education after the Trinity College and Duke University Press was established in 1921 might be mentioned the eight "Duke University Research Studies in Education,"

1931-1949, and the *Southern Association Quarterly*. That magazine, the official organ of the association, was begun by the Duke University Press in 1937 on the initiative of Few and Holton. The latter edited it, and it expired with Holton's death, in 1947.

It is no mean heritage that this little chronicle surveys. The conference whose papers follow in this volume was designed not only to celebrate Duke University's achievements in teacher training, but to reassess her relationships with the public schools of America. From the pronouncements of the members of the University in particular, both staff and alumni, it will be seen that the institution intends to continue to meet its responsibilities and its opportunities in a field sown thick with both.



## TOWARD A COMMON FRONT

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THERE is rancor, if not open war, in the educational world of today. Hostilities go forward not only within the ranks of professional education but also between "subject matter" and education. Their animus in fact has begun to shape the figures of speech used in educational writings. People talk about enemies and friends. A Southern scholar, discussing "The English Professor and His Natural Enemies," describes the schools of education as "blithe spirits, serpent-like in their wisdom but by no means as harmless as doves"—and he asserts that the "educators" are chiefly motivated by ambition for high enrollments. His antagonists meanwhile suggest that he and his colleagues have themselves long been protected by compulsory registrations and that, bred in the aristocratic tradition of letters, they have only a dim awareness of the meanings of the democratic idea of education for all.

Perhaps emotions are too inflamed to afford us hope of an immediate common front against the chief enemy of those who teach—namely, ignorance and unenlightenment. But if there is to be hope, it must spring from one basic conviction—that good teaching is important, at every level, in the crusade against obscurantism and for enlightenment.

Good teaching is not less important than medicine, engineering, chemistry, English, history, mathematics, scholarship, research. A conference on teacher training may well begin, therefore, with a profession of faith in the importance of good teaching. We all agree. No reasonable person could quarrel with the thesis—yet it is too often supported, as Dr. Henry H. Hill suggests, merely by lip service, not by a sincere commitment.

One of our central problems is to drive home the importance of good teaching from the cradle to the Ph.D. and beyond. If the faculties of our colleges and universities across the land held, sincerely and earnestly, this conviction of the importance of good teaching in the elementary and high schools and the colleges, coupled with understanding of the imperatives of education in a democracy, this conference would not be needed. Many problems now baffling

would be simplified, if not solved. We might achieve, in consequence, an advance in the public esteem of teachers—in their status, prestige, rewards. This, in turn, would have its effect upon the ambitions of talented young people to enter upon training for teaching on terms comparable with those spelled out by many other professions. Commitment to the importance of good teaching is fundamental, but, like the proverbial barn on the landscape, it often eludes our eye. Although we cannot emphasize it too much, we need to remember that mere lip service is no service at all. The need is for faith and works.

The men who initiated Union Institute and Normal College, the forerunners of Trinity College and Duke University, would be mildly astonished, I suspect, if they or their shades could be here today and hear a speaker, a century after their time, insist upon recognition of the importance of educating teachers. They might well ask: Why should anybody now even raise such a question? They spoke out a hundred years ago for precisely the same thing. They planned their institution for pupils intending to devote themselves to "the business of teaching common schools in the State of North Carolina." Indeed, they even asked the pupils to sign a kind of service loyalty oath, giving assurance that teaching in the schools was their sole object in attending college. The founders must have thought it would be a paying business, too, for their financing was in the form of a loan at 6 per cent interest. The taproot of this University, it is clear, is the training of teachers, and it is encouraging that this tradition is being honored and perhaps reactivated.

The shades of the founders may depart this hall with some comfort, knowing that their initial impulses are remembered and respected. Yet, if they could divine the educational impact of all the changes in our society since 1852, they might squirm in the mausoleums to which they return. Nearly every special problem before this conference is related to social, economic, and professional changes in American life during the past century—changes that they scarcely could have foreseen. The transition includes our gigantic growth of population, the deepening of the democratic concept of education for all our people, the fabulous triumphs of transportation and communication, and the specialization of function that has accompanied the advance of science and technology.

The shift from general to specialized function has affected the training, work, and services of millions of our people and has set its marks on our schools and colleges. Pinpointed professional com-

petence, division of labor, and increasing interdependence have indeed so influenced education that recent years have witnessed a revolt against the commitment, by direction or indirection, of all our education to the hand of subject-matter specialization. So has come a counterbalancing emphasis on general education, on teaching not steered by specialism, on the appreciation and learning of values that should be shared and understood by all. We are both a general and a specialized society—but it is general for most of our living, however sharp-bladed our competence in special function. As Woodrow Wilson once suggested, nobody specializes in the relations of things.

So we have a series of dilemmas, real or seeming. It is unrealistic to suppose that we shall become less specialized than we now are in work and function. Invention, the march of science, and the intricate demands of research point, in fact, to greater specialization than before, though there are also signs of more and wider bridges of understanding between adjacent areas of special knowledge. On the other hand, we urgently need, in school and college alike, to forward broad understanding, shared by millions, to make meaningful the basic forces of our civilization, past and present. Our society needs both specialization in skills and integration of knowledge. It must have high training in the spirit and technique of research as well as the most effective preparation for teaching. It needs to explore new frontiers in imaginative, disciplined thinking, and it also must meet an equally challenging range of problems in the teaching of people from the grades through the college years.

Our liking for absolutes explains the tendency of some observers to make specialization itself into the great bugaboo, an evil of education to be feared and shunned. This is nonsense—a confusion of viewpoints and values. The very training of teachers for every level of education is itself specialization, and in the range of arts, sciences, and professions we shall continue to expect and demand specialization. Our problems center, not in the fact of specialization, but in the encompassment of assignments and situations that it cannot master. Hence our concern about interrelationships and breadth in the understandings of prospective and actual teachers, about the need of humane sensitiveness to society and culture, about arrangements whereby subject matter is not crowded out by professional technique or technique ignored by subject matter, and our interest in a comprehension of the realities of the learning processes in chil-

dren, especially by the teachers of children and by the teachers of the teachers.

The time has come in American education for the scholars of subject-matter specialization and those who profess professional education to find common ground and to grapple unitedly with the problems of education that are crucial to the oncoming generations of our people. Misunderstandings, where they befog the scene, should be swept away. Weakness, where it is discerned, should lead, not to epithets, but to efforts to build strength. Bases for mutual confidence and co-operation should be looked for. If there is alignment into enemy camps, why not mutually explore assumed reasons for hostility and make sure that we have, in truth, picked the right enemies to fight?

It is not easy to identify either enemies or friends when the air is vibrating with controversial slogans. That this is the current turbulent state of the air, few will deny. What it means is that there is confusion of thought and view, shaken with more than a dash of emotional bitters. The professors of "subject matter" are puzzled by the ceaseless parade of slogans, from education for life adjustment to common learnings, from progressive education to the whole child, from activity and experience curriculums to the child-centered schools. They suspect that programs set sharply in conflict with one another are not in fact patterned contrasts of good with evil, of up with down. They wonder if evangelical fervor is rooted in basic investigation and research, or even in what one might call reasonable pilot-plant demonstration. Much of the contemporary distrust of professional educators by "subject-matter" people stems from the lack of fundamental research, or its thinness, or failure to demonstrate its applicability in the sweep of educational practice. Educational slogans and causes should have a secure foundation of research and testing.

One step toward a common front, in my judgment, is the production by professional education of carefully designed studies of basic questions, coupled with critical scrutiny of slogans, over-all solutions, and seemingly inflexible positions. It may well be that such an approach would be accompanied by an overhauling and simplification of education curriculums which, like programs in many other areas, have witnessed an astounding proliferation of courses, making catalogues obese, often confusing students, and possibly stifling much research by the sheer credit weight of offerings.



It is true, on the other hand, that for every slogan there normally is some identifiable cause or reason. People do not ordinarily march behind banners—or even change from one bourbon to another—without some reason. Most people will admit that the teacher performing her tasks as if pupils were disembodied minds is unperceiving. And most suspect that the school where children sat silently waiting their turn for parroted recitations wasted constructively usable time. I do not ask for placid peace. Controversy can ferret out abuses. Controversy can shake apathy. The clash of ideas can stir creative thought. But protest against abuses does not establish the validity of given proposed remedies, even if they command large funds and spawn slogans.

If fundamental research represents one possible direction to be taken by educators toward a common front, certain steps in the same direction might be taken by the practitioners of the liberal arts—the folk of the subject-matter fields. These might include efforts to remove from the general picture patent distortions of actualities; attempts to understand more fully and realistically the problem of democratic education for the millions who attend the public schools; and a willingness to look objectively at the fruits of scholarship as applied to the learning process itself. There is a clear need of viewing, quietly and unemotionally, the facts of the alleged “stranglehold” of education over subject matter. Any profession, whether it be education or medicine, that leagues law on its side in statutes of certification, courts the danger of inflexibility, complacency, and the static mood of a conservatively protected empire. This is one of the disquieting elements in specialization and the professionalizing of a given domain of work and service, and education is not immune to its toxic effects. On the other hand, as I look at the requirements of education in the university I know best, I find myself startled at the screams of fear that I hear across the land. The truth is that the prospective high-school teacher of academic subjects earns about 186 quarter credits, of which some forty to seventy fall in a major field—a subject-matter field—and some twenty-nine in the grand total of 186 are required in professional education. These center in the study of child development, the problems of adolescents, the meaning of education, the nature of the learning process, ways of measuring progress in learning, and supervised practice in teaching.

For the prospective teacher of children, with her reasonably good grounding in subject matter, this proportion devoted to what one

may call professional training seems somewhat less than shocking. Critical appraisal should be directed, as in the case of any subject-matter field, to the values in these subjects themselves rather than to their supposed threat of strangling subject matter. This is the sort of question that calls, not for emotion, but for cool and mature weighing as to whether such plans afford too much—or not enough—time for these areas of a teacher's preparation for her lifework. I do not assert that there may not be strangling of subject matter in some institutions or states, but I cannot find it in my own. If I felt an urge to scream, I should want my screaming to be based upon judgments of values and validities in the particular subjects studied—their potentialities, worth, and use. I am not against experiment, and if some state, buttressed with gifts of money, wishes to send out teachers who have no grounding in the elements of child development, learning, and the measurement of educational achievement, trusting that they will acquire wisdom and skill under master teachers, I shall watch the experiment with equanimity. Generally speaking, however, I favor knowledge. Once our lawyers were trained through apprenticeship under other lawyers, but for today and tomorrow I favor law schools. In the education of doctors and dentists and engineers and nurses, I favor something more systematic than apprenticeship under accomplished practitioners, though I do not deny values in such training. Notwithstanding my criticism of educators in the matter of fundamental research, it is undeniable that psychology and learning, and indeed education in general, have reached a stage of considerable knowledge and useful insights. It is better for teachers to know than to be ignorant of them, whatever growth they may achieve under master teachers. It is difficult to muster convincing arguments for ignorance and naïveté, though in some contexts they may have a certain primitive charm.

In the clearing away of distortions born of fear, we might glance also at a corner of the graduate picture, noting that a prominent American scholar believes that it is now virtually impossible in certain states for a high-school English teacher to take a master's degree in English. If this teacher lacks needed courses in education to meet legal certification—courses essentially undergraduate in character—I cannot forebear to ask either a state or a university, why involve this in a master's program? Why not meet it by forthright additional undergraduate work? Is the alleged graduate program in fact a graduate program and not instead a mixed marriage of undergraduate and graduate courses? Certainly, if the situation



does not involve certification, I know of no reason why the high-school teacher should not major in the field of her choice in a master's degree program. There is no policeman on my own campus to club this teacher into another program. She would be given encouragement, not to say benisons, by the Graduate School in her purpose to learn more about the riches of English and literature for her own humane education and the enrichment of her pupils, and she would also, I am convinced, have the sturdy good wishes of the professors of education.

What are some of the things that an arts college and graduate school, private or public, can do in educating teachers for the public schools and moving toward the common front? Any institution that leagues its arts and professional education faculties in a concerted and effective effort to understand and deal with the problems of training teachers for the public schools will make a notable advance. Any university that works out, with faculty and public-school consultation and co-operation, the many problems of integration of professional and subject-matter training for teachers will similarly advance the cause. Any university that can clear the air of groundless fears and tackle weakness and ineffectiveness through research, cool planning, and considered goals can make a contribution to American democratic education.

This conference will explore these and other paths toward a common front. Here let me only make a few modest suggestions, drawn from observation in one university. Every liberal arts department in the University of Minnesota has a voting member in the education faculty, and there is a considerable amount of intercommunication, though not enough to warrant any feeling of complacency. We have experimented with teams of visitors, made up of education and arts staff people, to the public schools, seeking first-hand views of needs and problems. New programs are developed occasionally through intercollege planning. A special major program in language-arts, for instance, was initially suggested by the Department of Speech and worked out by Education in conferences with Speech, English, Journalism, and the University Library. A new course was inaugurated in journalism, old courses were modified in English and education, and the program was tested and reviewed by interdepartmental committees.

At the graduate level we long since made room for a master's program of a nonthesis basis, primarily for teachers, with a field of concentration and several related fields, designed to break away from

the concept of a little doctor's degree and to combine depth with breadth. Teachers have flocked into this program, and it has made fairly rich contributions to high-school teaching in our section of the country.

The emphasis upon breadth obviously has implications not only for public-school service, but also for college teaching and the training of college teachers. It is folly to speak of upgrading university contributions to public-school teaching unless there is a concurrent move to upgrade college teaching. What value is there in ambitious formulations of purpose and slogans for their achievement in the public schools if, in the universities and colleges that educate teachers, we are complacent in the face of aimlessness of performance in the college classroom, absence of clear purpose, waste of effort, and an ineffectiveness that ignores elementary theories of learning? Let the university that wishes to interest itself in the teaching of the millions of pupils in the public schools look earnestly to its own teaching. Let it consider its teaching of teachers. Happily there are signs of ferment and improvement. A movement is under way. Two great conferences on the training of college teachers and their in-service growth have had wide influence. Regional conferences like that held in 1950 at Tulane University have added strength to the movement. A national committee on college teaching has been formed by the American Council on Education. These are signs of the times, but the most important are those now showing on the campuses of many universities. Flexible interdepartmental graduate programs emphasizing breadth are being inaugurated; institutions are trying to improve their teaching internships; workshops and other devices are forwarding institutional self-study; faculty committees on college teaching are active; Ford Fellows in large numbers are seeking enrichment of their teaching powers; and fellowships for prospective college teachers are emerging.

Underlying such activities there is a growing realization that research and scholarship, with all their unquestioned values, are not enough. Specialization in subject matter alone does not guarantee teaching effectiveness in the classroom. Those who assert the contrary are whistling in the dark. If we are to achieve a common front, the move must involve a widening recognition of the dignity and importance, not only of good teaching and subject mastery, but also of an understanding of the learning process in human beings, which is a part of the fundamentals in master teaching. Do you who speak so feelingly about the natural enemies of subject matter

deny that the learning process itself is worthy of sincere study and understanding? Do you who speak so earnestly about the learning process and the importance of understanding the minds and growth of individually different children deny that there is substance in history, literature, and mathematics? Are we to believe that these two schools are so extreme in their positions that they must occupy opposite trenches and hurl epithets, if not bombs, at one another?

To you both I say that you are in actual fact not enemies, but colleagues, engaged in a common task of urgent importance—the education of the youth of America—a youth in which the same hearts beat on through all the stages of schooling and into their living after formal schooling has come to an end. Where differences exist, I say to you: Meet on your fundamental common ground and try to work them out with some kind of applicable agreement as a goal, however vigorous the arguments may be.

In the process it is well to remember that intellectual curiosity about the learning process is respectable, hardheaded, tough-minded. It is not, and it need not be, destructive of values. Are not all those of us who teach concerned with the learning process? Are we not all “educators”? If those who in a special sense are called professional educators have sometimes erred in arrogating more knowledge to themselves than they possess, the traditional liberal-arts faculty members have sometimes erred equally in paying little or no attention to the fruits of research on the process of learning and to their applications to the interrelated experiences of students and faculty in colleges.

What I am advocating involves a sustained and constructive interest by teaching scholars of the subject-matter fields in teaching at all levels, including the public schools. A generation ago such an interest was manifested by liberal-arts scholars of the highest eminence in the academic world. In the field of history, for instance, a “Committee of Seven,” made up of leading American historians, studied the entire problem of the teaching of history in the secondary schools as early as the 1890’s under the aegis of the American Historical Association. Their report, published under the title *The Study of History in Schools*, influenced the teaching of history in every high school in America for many decades—and I may add that they did not neglect, in their studies and recommendations, the matter of “Methods of Instruction.” In our own time, I am glad to add, a committee representing both the American Historical Association and the Mississippi Valley Historical Association

as well as the National Council for the Social Studies made probing studies of *American History in Schools and Colleges*, and its report—the Wesley Report, published in 1944—is a wide-ranging and influential document. American education needs most urgently a continuation and spread of this kind of interest in all the subject fields, in co-operation with the teachers in the public schools.

Such an interest, if general and vital, inevitably would forward a significant related interest in the nature of learning, with spreading recognition that learning theory means much more than a few course credits or pet ideas or rambles in professional jargon. Ernest R. Hilgard sums it up when he says that “Learning so pervades human activity that any curiosity about the nature of man and his behavior leads sooner or later to inquiry about how his habits are formed, how his skills are acquired, how his preferences and tastes develop, how his knowledge is obtained and put to use. Equally important is how he becomes enslaved by prejudice and bigotry and other learnings which lead to trouble instead of to a satisfactory solution of his problems.”

What this comes to is that all of us—college and public-school teachers, subject-matter devotees and “educationists,” the psychologists who themselves probe theories of learning, even the propagandists who peddle meretricious wares to the public—are somehow trying to apply principles of human learning. If laymen find it disconcerting that psychologists quarrel constantly among themselves, we might remind them that the quarrels, as Dr. Hilgard points out, emphasize areas of disagreement, not of agreement—and that much has been learned that is not now the subject of differing views and controversy.

If we grant that learning is important and that much has been found out about it, we who teach had better study the business to our own benefit, alongside our study of the History of the Upper or Lower Mississippi Valley, the soliloquies of Shakespeare, the influence of Kant, or Fourier’s theories and orthogonal polynomials.

If we do study learning, we are likely to come out with a few findings of importance to us. It looks, for example, as if learning were a fairly orderly process. It seems, moreover, that it takes place both within and outside the classroom. There appears to be good evidence that bad behaviors as well as good or appropriate behaviors can be learned. Granting that formal classroom methods are directed to a more efficient and economical control of the learning process than is afforded by a haphazard scheme, it appears that



methods are not to be accepted as good methods unless, by testing through sound comparative analysis and study, they stand up with decent balance and posture. We may find also that, for effective learning it is not enough that the teacher be well motivated, in love with her subject, students, and work, and skilled in presentation. We may find that, beyond all this, there is such a thing as student motivation, operating both internally and externally. Alongside knowledge of such aspects of the learning process, however, and as an antidote to purely mechanistic views, we need to grow in our understanding of man's history, especially the history of ideas relevant to educational goals. There is no substitute for a humane knowledge of human beings.

Perhaps such knowledge will open paths leading toward a better grasp of interrelationships, the most neglected of all specialties. For a humane perception in the complex domain of human relations is a human virtue that we need desperately as we advance toward our tomorrows. Teachers in public schools and colleges alike face the need of understanding the educational implications of the fact that we live in an interdependent world. Sometimes we revolt against this interdependence, with its daily impact upon our living, and we hark back to individualism by going fishing for pike and muskellunge in lonely lakes, but interdependence trails us into the wilderness itself, as we quickly discover. In this world of interdependence, teams or groups of people produce, accomplish, govern, control, advance—or retrogress. The productivity of such a system depends upon variables, including individual ability, interest, and motivation, skills that can be applied to the task in hand, patterns of leadership, and the quality of relationship between members of the team or group. A low batting average on these variables means a low team score. Since individuals differ in ability and skills, many of the variables necessarily are individual, but it looks as if others are brought into being by the process of teaming and grouping and therefore are influenced, in their effectiveness and direction, by those who have the virtue of perception in human relations.

Such observations boil down to something simple, namely, that this virtue ties in firmly both with the classroom and with what we call the extracurricular activities. Therefore we need to appraise, in our present-day setting, the learning values in extracurricular activities, or, as one of my colleagues terms them, "co-curricular activities." There has been emotion and fear on this front. We remember the alarm voiced a generation ago lest the sideshows swal-



low up the circus, but the figure needs revision. Co-curricular learning may not be precisely comparable with sideshows—and education, even if it has some lions and clowns, is not precisely a circus. It is living and learning. It impinges upon the individual across all the hours of the days and weeks and months, in and out of class. One of the great problems of our time is that of minimizing unnecessary discord and futile hostility in society—in community, nation, world. Perhaps the “co-curricular activities,” if we appraise them without emotional bias, will seem to be generous forces in promoting perception in human relations and thus in preparing our people to meet the uncertain future with increasing social awareness and responsibility. Lack of such perception is a social and cultural blight. Education makes no surrender to anti-intellectualism or to debasement of standards by coping with this blight as unsentimentally and realistically as agriculture copes with potato blight.

This conference has before it an opportunity to advance the cause of teacher training in this great state, which harbored the first English colony in America, and in this renowned university, which, in its earliest antecedents, educated teachers for the common schools. But its opportunity is wider than that. It reaches out to all the states of the country.

Since this is a keynote speech, I should, in obeisance to the patterns of American precedent, close with a challenge. Very well, I do so. This is my challenge: Define the place of this university in educating teachers for the public schools. Appraise the changing purposes of high schools and look at your teacher education in relation to those changes. Suggest how your faculty can be brought into more understanding relationships with the public schools. Study the “integration” of professional and subject-matter training. Work out the relationships of subject-matter integration and specialization in the training of teachers. Find constructive ways in which American education can mobilize a working partnership between subject matter and profession, with respect by each for the contributions of the other. Help American education to make common front, professionally and in all the subjects that contribute richness and understanding to the minds and spirits of Americans, against the only enemies we should be fighting in our educational world—ignorance, unenlightenment, bigotry, intolerance, narrowness of view and outlook, and barriers to the freeing of minds and the play of hope and ambition for our youth. Drive home the importance of good teaching and of the education of good teachers,

with freedom to the teacher to teach the pupils who, in their vast numbers across the land and in their differing talents, are the citizens of "tomorrow and tomorrow and tomorrow" on whose understanding and sense of values the destiny of our civilization will depend.

# THE PLACE OF THE PRIVATE LIBERAL-ARTS COLLEGE AND GRADUATE SCHOOL IN TRAINING FOR POSITIONS IN THE PUBLIC SCHOOLS

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DEAN Blegen last night made an altogether admirable statement of the broad policies governing the relationship between higher education and the training for teaching. I do not wish to attempt to repeat any of his statements but will use this opportunity rather to make some references which might be useful in extending his remarks or putting them in a slightly different setting.

To begin with, I feel that we have not adequately assessed the historical development of the division between these institutions more concentrated on the nature of meaning and knowledge—the liberal-arts colleges—and those institutions more concerned with the over-all growth of the child into a well-balanced, healthy, and useful member of society—the teachers colleges. The student of a century hence may be hard put to explain to his contemporaries what the row was all about, if he looks at the outward and visible forms of these two institutional types. Were they not both slavish followers of a ritual involving courses and credits and accreditation? Had both not come through the period of 1870 to 1910 when the sacred images had been broken and new subjects introduced into the curriculum?

Yet a marked division of purpose was soon evident, and both official and personal links weakened. An observer would have to report that the liberal-arts colleges after the turn of the century put the training of teachers low on their priority list, and the great majority of their faculties were little interested in the struggles of public primary and secondary education; courses designed for teachers became in their scale of values far less reputable than courses designed for engineers or future doctors. It is little wonder that the number of their graduates who entered the teaching profession in the schools fell off both as to number and quality. And it is little wonder that teachers colleges and schools of education developed

a sense of inferiority. As the liberal-arts colleges introduced ever greater numbers of courses, the educators, determined to show that their profession was advancing at least as rapidly as their "prestige" colleagues in the arts and sciences, subdivided their courses at an almost equal rate. A determined effort was made to turn education into a dependable science on the analogy of physics or biology. (A comparable phenomenon is said to have taken place also in the humanities.) The urgent need of training large numbers took attention away from the training of quality.

A second point not explicitly discussed by Dean Blegen, though certainly implicit in several of his remarks, is what seems to me the pressing need for a most careful selection of those who will be in positions of responsibility in the public schools. Here my reasoning is based on the fact that there are factors in our national economy which tend to remove the centers of control from local communities to state or national bodies. Naturally I should not like to be interpreted as one who does not believe in state or federal contributions to local school systems. Yet I do believe deeply in the importance of local initiative and autonomy in the schools of a democracy like ours, even though all too often the tax resources of local communities can be strained no further to provide the necessary public schooling for the vast numbers in the coming decades. It seems to me clear that there are grave problems ahead and that it is of the first importance to persuade men and women of unusual social skill and intellectual capacities to enter the profession of the management of the schools.

But it is more than the traditional administrative posts that seem to be important. It is the whole question of providing a very substantial number of men and women who will make the public schools their profession, who will provide that continuity of teaching and internal management which is so necessary in a period when we can only expect a very considerable turnover of personnel. Some have described these individuals as supervisors, some as master teachers, some as department heads. I do not think that their title is of particular importance, but I do feel deeply that their position in the public schools should be recognized both in public position and in financial reward.

The liberal-arts college can without question in the next few decades play a major role in encouraging their students to consider this as a career. Presumably the first responsibility is the identification of those personal and intellectual talents which would fit well

with such a career. But simply selecting is not enough. The unfortunate academic history which has been referred to above has shown that there exists in many liberal-arts colleges strong resistance in the faculties for the encouragement of individuals who wish to study education. Here we cannot avoid talking about symbols. The misunderstandings of the past half century have attached to certain words an emotional as well as an intellectual meaning. For some, the difference between courses in subject matter and courses in "education" seem very great, and the words themselves have developed some of the quality of a battle flag. This seems to me most unfortunate because it confuses the real issue: that the study of education is the study of a central aspect of our society and requires the highest level of philosophic, sociological, psychological, or historical capacities. A sharp division between courses in these aspects of human knowledge and courses in education seems to me meaningless. But unfortunately the symbols exist and have to be taken into account, if we are to be realistic about faculty and student attitudes. Therefore, in developing one of our fifth-year training programs at the Harvard Graduate School of Education, which involves encouraging study in topics related to teaching in the undergraduate years in liberal-arts colleges, we have tried to emphasize the idea that so many hours of "education" are not required. We have found it more effective to speak in terms of analyzing the educational process in the contexts mentioned above, particularly if interesting students in the liberal-arts colleges in teaching is the goal in mind. The symbols of psychology or philosophy are here more useful than education. I suspect that our success with this effort depends on the extent to which the faculties of liberal-arts colleges are sensitive to the challenge that the problems of American education present, particularly to the departments of philosophy and the social sciences.

I would submit that what we know of learning theory, when combined with common sense as applied to late adolescence, suggests that a profession which needs to attract more and better teachers in the years to come should attempt to arouse interest in its problems early in the game. Young people who look forward to careers in engineering or medicine can cut their teeth on the type of problem presented in those fields during their undergraduate years. The relationship between the undergraduate courses and the actual life they undertake as members of the profession varies very greatly. It seems to me significant, for example, that there is a current trend in medicine which suggests that exposure to the social problems of



contemporary society is perhaps really more important, from the point of view of the future doctor, than exposure to the scientific problems represented in courses in chemistry, biology, and the like. No graduate school of arts and sciences will normally admit a candidate for a scholarly degree unless he has shown as an undergraduate a combination of intellectual interest in the area and evidence of being able to handle its problems successfully. I fail to see why this common-sense solution should not apply to future teachers. The institution of education in contemporary society presents an extraordinarily sensitive point of departure for both philosophical and sociological considerations. To state that consideration of these problems should not be permitted in the undergraduate years seems to me therefore a little naïve and harmful in the sense that it may keep out of the profession the very people we want in it. And, as you know, this seems to me a goal of the first importance.

The issue is clearly what is taught and what is learned rather than who teaches it or in what department. If the liberal-arts colleges can make such intellectual stimulation available to the undergraduates, I have high hopes that we shall be able to meet some of our personnel needs in the coming few decades. Without such help one can only be gravely concerned as to what will happen to this most sensitive instrument in our contemporary society.

I take it that the role of the graduate school of education, or the department of education in a graduate school of arts and sciences, is to provide advanced work for individuals who propose to make the public schools their lifelong career. I am one who believes that contemporary social science, and particularly social anthropology, individual and social psychology, sociology, and political science, in addition to history and philosophy, can make a major contribution to the asking of the right questions about the use of the public schools in our society, and to the investigation of the problems posed by those questions. It is necessary at once to enter a warning: it is surely dangerous to overestimate the exactness of social science in an era of science. But it seems to me equally dangerous to say that the occasional errors—and the error of prediction in the election of 1948 is only the most dramatic example—mean that all the methodology of contemporary social science is untrustworthy. We can only encourage the support of basic research by responsible investigators and pray for good results. It seems to me a reasonably safe gamble.

This final consideration, when combined with the emphasis I have put on the need for careful selection and quality, suggests the importance of a complete revision of our thinking about the financing and the nature of graduate studies in the field of education. It is an unhappy fact that for many years the schools of education at both undergraduate and graduate levels, but particularly at the graduate level, have been relatively starved for both faculty and adequate student fellowship support. Mr. Edwin Embree, in one of his last written publications, made a very dramatic contrast between the training of teachers and the training of almost any other individuals for professional work in our society. Mr. Embree's warning is easier to record, as we know all too well, than it is to suggest ways of providing the necessary support and prestige for this work. I am optimist enough, however, to feel that if the liberal-arts colleges combine with the graduate schools, and with those departments most deeply concerned with the training of teachers, this most difficult contemporary issue will be finally surmounted. If it is, the public schools will once again attract both in quality and in number the individuals which they will so desperately need in the decades to come.

## BETWEEN THE LINES

(Spoken at a special service in the Duke Chapel)

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SUCH a chapel service as this, part of a crowded conference program, may seem like little more than a polite genuflection, or a pious gesture heavenward, in the middle of very earthly and practical tasks. It is fitting to have some respect paid to a religious tradition on the part of educators, since we know that once religion had much to do with liberal education. In this country, especially, it was the inspiration and purpose of the establishment of private colleges and universities. Not much more than one hundred years ago the whole business of teacher training was carried on under the aegis of the church and conceived its goals in religious terms. So, we might say today, for grandmother's sake, for sentiment's sake, we pay this passing respect to a once lively ideal.

But we need to be reminded that there is more than a mere sentimental or accidental connection between our religious tradition and the ends of liberal education. This chapel is central to the architecture of this campus and pervades its life in subtle and myriad ways. Just so do religious ends pervade the purposes of training teachers, if one looks carefully at the matter. Between the lines of the particular problems we will be dealing with in the sessions of this conference and in all of our professional work as teachers and administrators—between the lines there are religious problems and religious insights which are of paramount importance.

There is a spiritual dimension to the whole enterprise of liberal education. That certainly we would assume, though we would put that spiritual dimension into words with difficulty, if not embarrassment, and with great variety. But one clear trend of modern higher education is the renewed concern about what are called "moral and spiritual values." All the ferment and searching of hearts among educators turn around spiritual issues. The magic word "integration" is the secular term for an ancient religious yearning for wholeness and oneness. And the faith that integration of the parts of learning is possible is based on the religious claim that this is a universe, and not a multiverse. When we get down to

these sober questions: Education for what? Growth toward what? Integration around what?—we cannot dodge the old questions about the nature and destiny of man, which have long been the worry and the wisdom of our religious tradition. In short, our present concern for moral and spiritual values is driving us to acknowledge that our predecessors had something after all, something we cannot afford to overlook: that religious values are at the core of the educational enterprise.

The concern of this conference is for the place of the liberal-arts college and graduate school in the education of teachers in public schools. What problem could sound more hard-headed, realistic, prosaic than that? But is there not a poetic, a spiritual assumption that we make, even in feeling that this is an important assignment? I submit that such an assumption is derived from our Hebrew-Christian tradition.

The points of common concern between religion and teacher training are not difficult to spell out, if one stops to ponder:

For one thing, liberal education in general and the liberal training of teachers in particular share with the Hebrew-Christian tradition the doctrine that persons are prior to things, that personality is of higher worth than material objects. Machines are made for man, not man for machines. Precisely the premise of liberal education, in contrast to technical education, is that while man might be educated to be simply a more efficient machine for the manipulation of nature to secure his comfort, he ought to be educated for more than that, because he is living soul, capable of thinking about and aspiring to that which transcends the material. Why? Where does that come from? From the Christian doctrine of creation—and the scale of creation that puts man above the animal and only a little lower than the angels.

Or again, it is an assumption both of liberal education and of high religion that quality of opinion is more crucial to the health of democracy than quantity of opinion. In a world of crowds, of masses, and herds, where all the instruments of mass manipulation degrade the common sense of judgment and produce automatic reaction and syndicated thinking, it is a hard battle to fight for the cultivation of discrimination in judgment, to hope for Emerson's man thinking, to create an aristocracy of thinking citizens within a democracy. Yet is this not what teacher training at its best attempts to do, and is this not what historically the Christian has affirmed as a high value? Liberal education and Christianity both affirm that

one does not get wisdom just by counting noses. One gets wisdom by cultivating the power of judgment in the few, in the intimate give-and-take of the mind of the teacher with the mind of the student. It might be more efficient on a mass basis to teach by television, but we know that something would be lost in that efficiency. There is an intriguing parallel between the ideal of Mark Hopkins at one end of the log and a student at the other with the fact that Jesus Christ picked twelve pupils with whom to work intensively.

There again, teaching in public schools and the training of teachers are expressions of the abiding religious principle that service to community is of higher worth than gain for self. Teaching and preaching have at least this much in common: in ratio to the extent of training required, they are the most underpaid professions. They are service professions, whose compensations lie in the spiritual satisfaction of losing one's life that others may live. There is nothing very glamorous about public-school teaching, or teaching at any level. It is grubby work that takes one through seas of ink and mountains of papers to correct. But it has its own grandeur, a grandeur that can be seen only through the eyes of a religious faith in the proposition that we find our life in giving it.

If it be true that the implicit assumptions of public education are religious assumptions, then religion should take its place at the center of teacher education. Worship, the central act of religion, is the celebration of the spiritual ideals that sustain our common endeavor, and the acknowledgment, in prayer and praise, of the transcendent source of these ideals. There is no reason to be repressed about celebrating these ideals, if we really believe them. Whitehead once said, "Education is impossible apart from the habitual vision of greatness." Our religious tradition would go further, and say, rightly: "Education is impossible apart from the habitual vision of God."



# EDUCATION OF TEACHERS FOR A MODERN HIGH SCHOOL

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MY TOPIC is the effect which changes in the high school have had on teacher training. I will try, therefore, to devote most of the time allotted me to that topic. Nevertheless, I feel compelled to emphasize at the outset that the major part of the high-school curriculum still consists of the same basic subjects that were there at the beginning of this century. The courses which are most frequently required and most frequently elected are English, history, the sciences, mathematics, and foreign languages. These subjects practically constitute the course for those students planning to go to college. They are the subjects which constituted the major part of the high-school course in 1900. The principal part of the training of high-school teachers today, as always, must continue to be a liberal education in these areas. In this respect the principal change in the curriculum has been its expansion to include the spectacular additions which have been made to human knowledge in the past generation. The English literature courses must give serious attention to the flood of twentieth-century writings. The social studies courses must cope with the problems of an industrialized and international society. The developments in the field of science have made the chemistry and physics courses of even my high-school days look puny. One great question resulting from the changes in our society, the expansion in knowledge, and other developments to which I shall allude, is whether it is possible to train a high-school teacher to face his work adequately. It is generally conceded that the task cannot be done in four years. The debate now is not whether a high-school teacher must have five years of training, but whether the fifth year can come most advantageously immediately after the completion of the four-year program or during the first few years in service. I believe the latter.

Aside from the expansion in human knowledge, I see other significant changes in the American high school which have important implications for the training of teachers. For the sake of convenience I have classified them under three headings: physical changes

in the school, an increased concern for the welfare of the students themselves, and an increased concern for the society in which they are to live and participate as adults. Let me discuss each of these in turn, briefly.

First, the physical changes. The most obvious change is the tremendous expansion in high-school enrollment. There were 700,000 high-school students in 1900. Fifty years later there were 7,000,000. This figure will increase rapidly during the next decade. Immediately apparent is the necessity for many more teachers. Despite the fact that there is at present an oversupply of teachers for some high-school subjects, the number needed is much greater than ever before, and it takes no quality of omniscience to predict a shortage of high-school teachers before 1960, unless the public and the teacher-training institutions do something about it. This is particularly important to the liberal-arts colleges. While it is still true that the majority of high-school teachers are graduates of liberal-arts colleges, the teachers colleges are providing secondary school teachers in ever-increasing thousands. They have been more alert to the need than have the liberal-arts colleges, which like to continue their emphasis upon traditionally organized courses and small numbers. Whether we choose to do anything about it or not, the needed teachers will be trained. The handwriting is on the wall. Unless we adapt our programs, undergraduate and graduate, to the needs of teachers, and admit teachers and prospective teachers in greater numbers, the job will be done by the teachers colleges. And, if we do not try to help, we have no right to criticize these colleges. Rather we ought to commend them for performing an essential service from which we shrink.

Other physical changes in the school besides the increased enrollment may be found in the improved facilities. These include new and better buildings, furniture, and fixtures. They also include abundant new and complex teaching aids. Better and more varied laboratory equipment is available. Libraries, although still usually too small, are bigger than ever. For the better equipping of both libraries and laboratories teachers must know how to find out what is available and how to obtain it. These things can be taught. There has been spectacular development in the field of audio-visual materials. Films and filmstrips, records and transcriptions, tape and wire recorders, slide and opaque projectors, public-address systems—these are by no means all of the equipment which the modern teacher must know how to use. He must be taught not merely how

to operate the equipment, but how to determine when it is wise to use it and when it is wise not to use it. Above all he must be taught how to make his teaching more effective through it. As less reliance is placed upon a single textbook, it becomes more important for teachers to know how to plan for the use of many books and other materials. This, too, can be taught.

The second main heading under which I classified changes in the high school is the increased concern for the needs and interests of the youth in school. One of the ways in which this is manifested is through attention to the varying interests and abilities of individual students. We know now that within a normal class there are five or six grade levels of ability in almost any given skill. In this situation teachers must be taught how to provide materials and experiences which will be both interesting and meaningful to the slower student. At the same time they must be able to challenge the abilities of the rapid learner. Another manifestation of the increased concern for the needs and interests of youth themselves is the greatly expanded extracurricular program. This is no longer confined to literary societies, intramural sports, class plays and proms, but runs the gamut of literally dozens of activities, from the honor societies and the student council to the camera club and the press club. The teacher going out into schoolwork today can be assured that he will not only have to teach school subjects, but will also have to provide leadership for a homeroom and sponsor the school paper, the school annual, and drama club, the Hi-Y, or some others of the many extraclass activities through which students find opportunities for fellowship, leadership, and expression. The teacher-training institution which does not give help in these matters has failed in part of its obligation.

An important factor to consider in relation to the school and student needs and interests is that the nature of the high-school population has changed greatly during the past fifty years. At the turn of the century attendance at high school was voluntary, and most high-school students were preparing for college. This meant that the level of ability was above average and that the purpose of high school seemed fairly obvious to most of the students. Today, as a result of many factors, not the least of which are the compulsory attendance laws, a large part of the high-school population is made up of unwilling students. Many of these have neither the ability nor the inclination to follow the traditional school program. They are waiting for the end of their school careers so that they

can get to work at something interesting and useful. It will do no good to complain about them. As President Cleveland said of the tariff in 1887, "It is a condition which confronts us, not a theory." If these students are to gain anything useful in school, they must be provided with a program which appears at once interesting and meaningful. Such a program can be presented only by teachers who have broad knowledge and experience, who know how people learn, and who understand and like children. The college can do much to provide broad knowledge and to give an understanding of children and how they learn. Perhaps it can do a little to make teachers like children. Where it fails in this last, it can perform a useful function by guiding away from the teaching profession those candidates who are personally ill-fitted to be leaders of our children.

Still another manifestation of the concern for youth is the increasing attention given to students with special problems. More and more schools are providing special instruction to those with defects in speech, sight, and hearing, or other physical disorders. Similarly there are more and more classes in special education for students who, for one reason or another, do not learn as rapidly as others. These kinds of special instruction require particular skills resulting from highly specialized training. While not all teacher-training institutions can or should provide such training for special teachers, the nation as a whole is not training nearly enough teachers as specialists in student problems.

Another kind of specialist for whom there is great need is the school counselor or guidance worker. As schools have faced the need for helping youth answer the questions that are important to youth, it has been necessary to provide experts capable of diagnosing difficulties and giving advice on personal, scholastic, and vocational problems. Here, again, relatively few teacher-training institutions are prepared to give the needed training, but the school system needs far more such specialists than are available.

The third major heading under which I classified changes in the school which have significance for teacher training is an increasing concern for the adult society in which our students are going to live and participate. We are concerned for the perpetuation of our free society. We are coming to recognize that differing societies require differing kinds of education. Henry Adams, I believe, once described his education as one proper for an English gentleman of the previous century. Our schools are more concerned



than they were formerly with providing an education for free citizens in a free society.

Because this is true, the atmosphere is much freer in a modern school than it was in the school of 1900. Realizing that in the long run freedom depends upon self-responsibility, we try to develop self-responsibility early in life. That means that the leadership required from the teacher is not the variety which depends upon coercion. The teacher must have faith in freedom and skill in democratic leadership. Much of both can be taught in a teacher-training institution.

Another aspect of the increasing concern for adult free society is the increasing emphasis upon understanding and the skills of critical thinking, and the decreasing attention to mere rote memory. In a free society it is vital that the citizen not merely recite the creeds, but that he understand the reasons for them and be free even to challenge them. We strive, therefore, to teach children to weigh evidence, to withhold judgment until they have a basis for sound judgment, to draw inferences, to make generalizations, and to detect bias. These are only a few examples of the skills in critical thinking upon which we like to place emphasis. In order for teachers to teach these skills and help their students to understanding, the teachers must themselves have the skills and be familiar with ways of teaching them. They must also be familiar with the ways in which students learn. Much of the necessary skill and understanding can be taught in college.

Another phase of the concern of the schools for life in a free society is to be found in the fact that the school is assuming an increasing responsibility for teaching desirable attitudes. Twenty years ago it was a matter of open question whether the schools could teach attitudes. That question has been settled by the educational systems of the dictators. Most of us are now committed to the teaching of desirable attitudes. Among these are an enlightened patriotism; a belief in the value of the individual; abhorrence of selfish special privilege; respect for the dignity of all useful labor; loyalty to the freedoms of the Bill of Rights; and a sympathetic respect for those who differ from us in matters of race, religion, nationality, and political belief. These attitudes can be taught only by those who have them and who know how to make them part of the teaching process. Here, too, the colleges have their contribution to make.

Still another aspect of concern for adult society is to be found in the expansion of the high-school curriculum. While the traditional



academic subjects continue to provide most of the course work for high-school students, there has been a multiplication of subjects, most of them dealing with contemporary society or with practical training. The liberal-arts college has an obligation to provide training for teachers of many of these subjects, such as sociology, modern problems, general science, general mathematics, health, and physical education. On the other hand the schools must probably continue to rely in the main on other institutions for teachers with specialized training in the vocational subjects such as industrial arts, home-making, and business education.

I have tried to emphasize what seem to me the most significant changes in the high school which have an important bearing on the education of teachers in private colleges and universities. I have pointed out that there have been other significant changes about which the typical liberal-arts college can do little or nothing. We must rely upon other types of institutions to provide for the problems resulting from those changes. However, the changes about which we must do something unless we are to bow out of the picture pose great problems for us. We must not lessen our academic education; in fact, it must be broader than was necessary a generation ago. At the same time we must give more attention to the training necessitated by the improvement in the physical facilities of the school, the increased attention to the needs and interests of youth, and the demands of citizenship in a free society.

# IMPLICATION OF THE MODERN HIGH-SCHOOL CURRICULUM FOR TEACHER EDUCATION

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THE title of this paper leaves the inference that the high-school curriculum has undergone significant change in recent years. Firsthand observation would indicate that the change is barely perceptible and much too slow for frontier thinkers in the field of secondary education. In spite of national committees beginning in 1918 with the Committee on the Reorganization of Secondary Education and its pronouncements entitled "Cardinal Principals of Secondary Education" the high-school curriculum remains essentially academic and college preparatory. Less Latin and other foreign languages are required; fewer schools require advanced mathematics; more schools offer problem courses, driver education, business courses, and fine arts. On the whole, however, changes that were recommended more than a quarter of a century ago have appeared in very few places. The high-school programs continue to be one-sided in emphasizing the academic and abstract. In most schools one-half or more of the required subjects are in the fields of English, social studies, mathematics, and science. Although many respected educational leaders have advised a core program for two decades or more, the United States Office of Education reports that less than 4 per cent of the high schools of the country even claim that they have a program that may be regarded as a core program. It may be as Mort found in his Pennsylvania study that it takes fifty years to spread and popularize a new idea in education. Perhaps in the United States the schools are at the very threshold of important new practices and functions. If the high schools are to launch out on a program based on worthy social objectives that aim at profound and significant changes in the behavior of youth, then the schools of education, supervisors of instruction, and superintendents need to examine their programs for the education of teachers in this new school.

Both the professional training received by the teacher in the school of education and the in-service training which she has a right to expect on the job take on meaning only in terms of the purposes

of the school. If the school attempts only to teach certain skills and information for further academic learning, the education of the teacher will be such as to make sure that he or she is adequately fortified in subject matter to impart the same to his pupils; if, on the contrary, the school sets up for itself broad objectives, functions, or life purposes, the education of the teacher takes meaning in terms of these purposes. One of the latest studies of the needs of all youth in a democratic society is that by the National Association of Secondary School Principals of the N.E.A. in 1944 entitled "Planning for All American Youth." Ten purposes are recognized as imperative. These are:

Vocation  
 Health  
 Citizenship  
 Family-Life Education  
 Consumer Education  
 Science and Scientific Method  
 Appreciation of Beauty  
 Worthy Use of Leisure Time  
 Ethical Values and Respect for Others  
 The Ability to Think

Briggs embodies these purposes in his well-known statement that the purpose of the high school is "to teach pupils (1) to do better the desirable activities that they will do anyway and (2) to reveal higher activities and to make these to an extent possible."

Acceptance of such objectives means that teachers can no longer be prepared merely to teach narrow ranges of subject matter. Rather will they be expected to teach pupils so that they may do better those things that they will do anyway. Teaching will concern itself with such fundamental purposes as choosing a vocation, getting along with the family and with other families, including those of different race and color, earning and spending income, attaining and keeping health, etc.

#### PREPARATION OF TEACHERS FOR THE REORGANIZED SCHOOL

Are the teachers who are being prepared today competent in these areas? Anyone can quickly bring to mind evidence to the contrary. In our own system, when the Health Department asked all teachers to screen their pupils to select those who had flat feet, bad teeth, poor eyesight, or poor hearing, a great cry went up in

protest. The complaint was made that nurses and doctors were asking them to do work that they should not and could not do.

In the matter of vocational information, the average classroom teacher has been a relative ignoramus. Not being familiar with business and industry, she has been at a loss to supply facts and ideas from real experiences. Knowing her weakness in this area, she has been willing to leave this function to chance or to others.

The success of the citizenship-education program sponsored by the Kellogg Foundation outlines the weakness of the social-science teachers, to say nothing of others in teaching citizenship.

In the area of family-life education the teacher is almost helpless. Many schools are holding conferences with parents at stated intervals and with beneficial results, but how much better these interviews could become if teachers had a better understanding of the effect of family tensions and economic and social status on the child. Unless the teacher has sound, scientific principles to support her statements, they are likely to be of little value. Many of the positions taken by the teacher in these conferences cannot be borne out by cold science.

If it is important to teach pupils to buy wisely, then the teacher should possess some competency in this area herself. It would surprise most principals to make a poll of their faculty to find out how few know of national services to aid the consumer in making wise purchases; and very little attention is given to investment because the teacher has had no help herself.

Although science has become of paramount importance, most teachers are willing to leave the study to those who specialize in the subject. Scientific thinking is reserved for the teacher of the natural sciences and not the social-science teachers or the other teachers of the academic subjects.

In aesthetics, music and art are not related and integrated as they should be with other subjects. The social-science teacher, the natural-science teacher, and the language-arts teacher could make far greater use of music and art if they only knew and had been taught to use these subjects.

Since the report of the Committee on Cardinal Principles of Secondary Education in 1918, much has been written on the subject of education for leisure time. The attendance at movies and the reading of such literature as we find on our newsstands is one measure of the effectiveness of our teachings.

Another objective set up by the Committee on Planning for American Youth is that of ethical values—respect for the rights of others, recognition of real worth in all persons regardless of race, religion, or nationality. How can this objective be achieved when many of the teachers themselves show haughtiness and snobbishness toward co-workers of a different race or religion? In some of our school systems white teachers object to meeting with Negro teachers in efforts at co-operative educational planning.

Finally, the committee would include "ability to think" as a major purpose. Of course, that has long been one of the goals that the American high school has considered desirable and attainable. The philosophy of Dewey and the studies by Thorndike and others have demonstrated, however, that ability to think is a specific product not easily transferable and often lacking entirely in the typical classroom situation.

Our teachers who have been prepared to teach narrow segments of subject matter are thus not prepared to teach boys and girls in any competent way when teaching for broad purposes.

Interviews with prospective new or experienced teachers are frequently, even usually, disappointing if the interviewer expects to find examples of teachers who do have the broad point of view. Few teachers have skill in conducting group work; and yet much teaching must be done by group rather than by individual methods. The term "group dynamics" has not become a term that is widely known or well understood by many teachers.

Another phrase that has become a professional slogan since World War II is "life-adjustment education." If one does not want the disappointment of discovering that almost no teachers know the significance or meaning of the term, he would do well not to ask of an applicant what the term does mean. He is not likely to get any informative answer.

In the field of content, teachers can talk on the subject of special areas, on very limited segments of narrow academic fields; but they will almost invariably give an incoherent or erroneous answer when asked for the meaning of "core curriculum." Philosophers all through educational history, however, have emphasized broad purposes for education; and scores of writers have urged the core program. Its characteristics and its value should be known to all of those associated with teaching.

Reams have been written on the subject of co-operation *vs.* competition. Schools are urged to give up the competitive marking



system and to conduct classes in such a way that self-evaluation will follow. Teachers are implored to do co-operative teaching, but they will not be persuaded. In the minds of some supervisors, the belief persists that two teachers, for example, could unite their groups, plan, and together share their ideas, skills, and knowledge and do a far better job. Some North Carolina schools could blaze a new trail in "co-operative teaching."

Many other illustrations might be given to show how inadequate are the objectives of the teaching profession. They focus too closely on bits of academic subject matter rather than on broad purposes. Consequently, activities and organizations that could be of vital value in a broad purpose program are ignored or unknown. For example, few of us in teaching are acquainted with the hostel movement or vitally concerned about school camping or the school excursion. A program thus based on the common and essential needs of all youth will be a very different one from that based on four units of English, two of social science, one in mathematics, etc. Teachers obviously would require different training programs for the two contrasting programs. More teachers need to be prepared for the broad purpose program.

#### MORE ADEQUATE PREPARATION OF TEACHERS

The preparation of teachers for the new high school probably calls not for quantitatively less subject matter but far more, if anything. Much is needed that is not present now. Hardly anyone will disagree with Chancellor Graham that a thorough background in content is essential and that it should come from all important areas. There are gaps in most training programs as we know them. On this subject the report of the Educational Policies Commission entitled "The Purposes of Education in American Democracy," written in 1938, stated:

The preparation of educational workers should include a broad general education as well as adequate professional preparation. The content and scope of the general education should differ very little, if any, from that for other well-educated citizens, and should be directed toward sound scholarship and a cultural background in the major areas of human experience. A community should expect its teachers and school officials to be the representatives of a high level of humane culture. Much of the preparation of administrators as well as that of teachers now tends to make them provincials in the geography of interests and to narrow rather than broaden their social outlook. The general education of any worker in the field of education should acquaint him with the various institutions

and forces that influence modern life and with the dominant current trends and issues in the major areas of learning—science, letters, philosophy, sociology, and economics.

If the needs of youth are as recognized by the committee of the National Association of Secondary School Principals, then teachers must know something more of the world of work, of economics, of sociology and political science, of ethics, of international relations, and of science. The world is so complex and so interrelated that much knowledge and many critical but tolerant attitudes are imperative. Of the citizen of tomorrow much will be required.

Where does this emphasis on content material that is properly related to broad objectives lead? Does it emphasize professional training less? That would not seem to be the answer. Perhaps when the peak enrollment period is over and teachers are more plentiful, the master's degree may become a requirement for teaching. Five years of preparation beyond high school would be highly desirable. It would enable the teacher-training institution to include more content material and to postpone to the graduate school much of the professional work, some of which could be done in the nature of apprenticeship or on-the-job training.

The evidence is more and more plentiful that school people recognize the inadequacies of present practices and are beginning to remedy those practices. Writing in the February 13, 1952, issue of the *Ohio Educational Research Bulletin*, Editor Eikelberry in commenting on the establishment of the position of Supervisor of Conservation Education in the Ohio State Department of Education has this to say:

The establishment of the position is noteworthy because it is evidence of an interest in the integration of subject matter around practical concerns. One of the most important educational developments of recent decades has been the increasing attention to problems of living as contrasted with logically organized subjects. This development has gone farthest in the elementary school, but it is under way in the secondary school and the college. It is in line with the movement for more functional educational programs.

Dr. L. Thomas Hopkins of Teachers College in an address before a Curriculum Conference last November at Columbia University had these pointed remarks to make to the profession:

Educators must find a new operating center for their work if they expect to achieve professional recognition and status. We must find and develop a new operating center more in harmony with the changing social conditions and the emerging concepts of individual

and group behavior. Today the child who is predisposed toward cooperative interaction through his growth process is placed in a school where he is taught, by authoritarian methods, selected indigestible fragments of experience of great men of the past even though the record shows that such knowledge acquired through traditional teaching has little or no spread value.

In his vision for the teacher in the new school, Hopkins thinks of him or her as:

The process expert not only to serve in the schools but also to act as consultants to every type of community institution. Every businessman should be able to call on the schools for help in dealing with human problems in his industry, for only by such cooperative, interactive process can private enterprise be maintained. Much of the difficulty between educators and parents or the public would disappear if they used such process in their deliberations instead of arguing about accepting results derived by noncooperative efforts. The school would then become the central integrating institution in American life and educators would become the leaders in moving such life forward.

All of us who are genuinely interested in our profession dream of a day when the school will really serve the needs of youth more adequately than it does today. Every administrator knows that the key person in the development of such a school is the teacher, and her competency depends upon many factors. Her collegiate and professional training are most important. Furthermore, it has only begun when she receives her certificate to teach. The schools of education and the public schools must maintain an interactive and co-operative relationship constantly. Only by so doing, will the philosophy as here presented have much of an opportunity to function. Perhaps the very difficulty of the task accounts for the slow progress. Encouragement, examples of good practices, and praise for even a little success are needed. The public schools need the counsel and the inspiration from the professional leadership of our departments of education in our universities and colleges. For a hundred years they have had competent leadership from this institution, and now that a new type of school, we hope, is in the offing, much greater things are expected. Public-school officials are confident that this service will be given.

# HOW DOES THE CHANGING PURPOSE OF THE HIGH SCHOOL AFFECT TEACHER EDUCATION?

(A summary of the two preceding papers and  
the discussion upon them)

HAROLD T. PARKER  
*Associate Professor of History*  
*Duke University*

THE reporters have been instructed to summarize the contents of two substantial papers, epitomize the hour-discussion that followed, indicate the areas of agreement and disagreement, point out the dominant trends of thought, convey the core and spirit of the meeting, add something significant of their own—all in five minutes. We have plenty of time.

Now this conference was assembled to discuss "the place of the private liberal-arts college and graduate school in the education of personnel for positions in the public schools" in this *changing* civilization which sometimes baffles me and to a degree baffles all of us. Panel I discussed how the *changing* purpose of the high school affects (or ought to affect) teacher education. Mr. Cartwright of Duke University and Mr. Garinger, Superintendent of the Charlotte City Schools, were in essential agreement in their papers. The purpose of the high schools of 1900 was to fit a relatively able, homogeneous group of 700,000 students for college (even though many of them did not attend college) and for college subjects. The purposes of the high schools of 1952 are broader and far more difficult of achievement. They attempt to develop a medley of 7,000,000 adolescents as individuals in part by paying attention to the needs and interests of the youth in school, to prepare the adolescents for adult participation as free citizens in a free society, and to fit some of the individuals for college. To accomplish these diverse aims requires teachers of tolerance and breadth of view and considerable skill. They need a general education more thorough than that of any other citizen, a knowledge of several subjects, an awareness of how people learn, and skill in democratic leadership. They also need specific skills, such as how to develop critical-mindedness, how to sponsor extracurricular activities, how to use audio-visual aids.



In the gradual acquisition of all these qualities and skills the university can help. A great university is devoted to the pursuit of wisdom and the development of human personality. Education anywhere proceeds in part by calling forth the finest possible from the individual—socially, morally, intellectually, and spiritually—and giving it exercise. The faculty of a great university can awaken students who, if they become teachers, will be growing individuals in a growing educational system, and let us hope, in a growing state and nation. Such achievement requires master teachers at the college and graduate level. In the discussion it was observed that in fact the quality of teaching deteriorated from the elementary to the graduate school.

The university may also aid the growth of the experienced teachers. Discussion centered largely around this point. Both Mr. Garinger and Mr. Cartwright favored a fifth year of school for teachers after they had been in service a few years, or perhaps attendance at summer sessions. It was observed that summer courses in subject matter should be modified or should be so taught as to meet the needs of a teacher who must achieve and communicate a breadth of view. It was agreed that course requirements required of elementary school teachers of North Carolina prevented, or at least hampered, the teacher from attaining a general education. The establishment of summer workshops was approved. In fact there was general agreement throughout the panel on what should be done: both general education and specialized courses, both subject-matter and professional courses, better college teaching, modification of summer courses and of state elementary school requirements, and workshops. The problem is one of persuasion. It remains only to change the minds of university administrators, university professors, and state officials—all three notoriously flexible in their thought. This conference is in part an item in this process of persuasion.



# RELATING THE COLLEGE CURRICULUM TO THAT OF THE PUBLIC SCHOOLS

FRANCIS E. BOWMAN

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REFLECTING on the subject of this conference and of this panel, I discovered that when you touch the fabric of American formal education at any point, you hold a thread that is woven into the whole pattern from the first grade of public school to graduate professional training in the university. I found myself confronting such urgent problems as the progressive democratization of the schools, President Conant's program of national scholarships for the conspicuously superior, the evolution of the community college, the training of college teachers, and the very survival of the private college and university. But the larger framework of our topic I gladly leave to wiser and more experienced heads than mine. I only know that the main reason we find it necessary to discuss our topic is that while private college and public school each has become engrossed in its own affairs we have all lost orientation and perspective.

Our panel topic is relationship of faculty and staffs, and mine, the relationship of curriculums. I should like to impose three restrictions on my remarks. Since I am almost ignorant of technical problems of public-school curriculums, I must interpret the term broadly to denote subjects taught, the ways they are taught, and the people who teach them. Second, I take it we are excluding certain real and important relationships between college and school people: departments of education, whose job is to know what schools are doing; our colleagues who have taught in the schools; college teachers who are parents of school children and members of PTA; colleagues who serve on boards of education, advisory commissions, and surveys. Though we need not discuss these relationships, we should not forget them. Third, I shall draw evidence mainly from departments of English, with whom I have taught for over twenty-five years.

With the ground cleared, let us measure the estrangement of college people from public-school affairs. For we must admit, I think, that relationships are not now close. Let us take a quiz. Can we name the current state-adopted texts in our field used in high

school? When were these texts adopted, when will the next selection be made, what is the procedure of selection? Have we read the state syllabus for instruction in our field, or do we even know for certain that one exists? If there is one, do we know who prepared it and when it is to be revised? Do we in English know how many themes are required in the eleventh and twelfth grades? How and in what grades spelling and grammar are taught? How many members of English departments are now reading *The English Language Arts*, the first of a series of five volumes prepared by the Commission on the English Curriculum of the National Council of Teachers of English? How many of us can define the terms *core curriculum*, *co-curricular activity*, and *articulation* as public-school people use them? Do we know the average teaching load in our subject in high school, and do we understand the formula for computing it? Are we members of state associations of teachers in our field and do we take active part in their work?

Surely these are pertinent questions, but what are our scores? Let us measure the estrangement in one other way, tracing a case history—my own.

At Harvard, teaching full time but with one foot in the classroom and the other in the research library, I do not recall hearing any shop talk of public-school affairs beyond grumbling about the preparation of freshmen and some debate over the merits of private schools. Indeed, in those years H. L. Mencken and far better critics were flaying Educationists, with a capital E. While we delighted in the spirited attacks, we absorbed a prejudice which embraced the public schools as well.

Harvard has undergone a change of heart since my day, if we may judge from the educational philosophy of President Conant, urgently and earnestly set forth in many books and speeches. What we can learn from him at this moment is that no one at any point in the system of education can afford to remain blind to what is occurring at other points.

In those years and later I had the good fortune to read College Entrance Board examinations side by side with school people. I was not in direct contact with schools, but each year I learned what and how well schools were teaching college-preparatory students.

At New York University, a private institution, although public-school teachers enrolled in our summer session and extension classes, I and the rest of the English department had no contact with even the city schools. Freshman instructors were horrified by what stu-

dents wrote about life in the city schools, but apparently we were not impelled to lend a hand in improving the situation.

At the University of Rochester, another private institution, public-school teachers again appeared in summer session and extension classes. Annually the English department held a perfunctory luncheon with city-school English teachers, at the insistence of a devoted Rochester alumnus among them. Luncheon conversation was affable, but no apparatus existed or was apparently desired by the college staff for continuing throughout the year discussions which arose at the luncheon.

This survey indicates that college instructors know too little about school affairs for their own good—and for the good of the schools. What can we do to improve our knowledge of public-school subjects, ways of teaching, and teachers?

One thing is certain: the college must take the first step, as has been done in calling this conference. Public-school people have long had the welcome mat out. I know from experience that they show warm gratitude for any attention a college instructor gives to their problems. High-school teachers and supervisors regularly write to directors of freshman composition asking for the latest syllabus of the course. I should be happily surprised to learn that these directors have ever sent a similar request to the high school. School people can be expected to do little more for us. They are too modest to assume that they can contribute anything to the college curriculum, apart from suggestions on teacher training. Besides, their minimal, year-to-year needs would appear to be met by the state universities. Why should they come knocking on *our* door?

Private colleges can, acting through the several departments, encourage participation in existing agencies of relationship. The ways are clear for English departments. The national College English Association sponsors several committees on relations with high schools. One that I have worked with prepared a report on teaching load in high-school English with the purpose of appealing directly to accrediting associations to reduce it. The National Council of Teachers of English includes college and school teachers. Its Commission on the English Curriculum, already mentioned, lists 60 members from public schools, 62 from state colleges, and 23 from private colleges. The annual meeting of the College Conference on Composition and Communication, a subsidiary of the National Council of Teachers of English, provides a committee on relations

between public schools and colleges, which it prefers to call "articulation."

Nearer at hand are the state associations of English teachers. Increasing in number, they have arisen in various ways to meet local needs. In Illinois the director of freshman composition at the University of Illinois appears to have started action. In Alabama it is the head of the English department at a state teachers college; in Tennessee it was the head of the English department at the University of Tennessee; in Kentucky it is the dean of the graduate school.

In North Carolina credit goes to Professor-Emeritus George R. Coffman, then head of the English department at the University of North Carolina, and working beside him, Professor Earl H. Hartsell, now executive secretary of the North Carolina English Teachers Association. What was originally only a brief department meeting held in conjunction with the annual meeting of the State Education Association has grown independently, while still acknowledging its parentage, into an association with over six hundred dues-paying members, with three stated meetings a year (the tenth three-day summer institute will be held jointly at Duke and Carolina next month), with eight committees at work throughout the year, regional councils, and a bulletin published five times a year. On the working committees sit college and high-school teachers; even our maverick history professor William B. Hamilton is among them. Discussions of common problems produce tangible results, such as a popular, colorful literary map of the state (a project now being imitated in Illinois and Mississippi), a handbook on North Carolina writers to appear shortly, an annual publication of the best high-school writing, the first inclusive syllabus for teaching English in the public schools. The committees are now co-operatively at work revising that syllabus.

I can think of no better agency than this for drawing college instructors and public-school people together. If the college instructor has ideas for improving the teaching of English in the schools, the bulletin is open to him, or he can try to incorporate them in a committee report. Through committee work he learns what pupils are reading and writing and he can help to reshape the requirements. The damage to good teaching caused by the excessive teaching-load he can assess himself. I learned that teachers, after several years' experience, discover serious gaps in their preparation. They genuinely desire refresher and rounding-out courses, but they can't get them at the private college. To retain and renew their certifi-



cates they must move toward an advanced degree; yet graduate schools frown on their qualifications for graduate work, and the courses they really need are upper undergraduate courses.

The means are at hand if we will use them. Others can be created, like the Duke Science Teachers Laboratory Conference. What is needed is forsaking inertia, lethargy, and just plain indolence. Yet to use these agencies fully, private colleges may have to refashion the conventional pattern of duties required of their staffs. At present no time and reward are provided for establishing and maintaining useful relationships with the schools. In practical consideration of his own promotion and even his health, how much time can the college instructor afford to spend on public-school problems, even when he is convinced of their vital importance?

Certainly, close intimacy between private college and public school is vital to both. Detailed knowledge of the college performance of high-school graduates will enable the school to reassess its college-preparatory program. The private college, by exploiting its peculiar independence and objectivity, can apply a steadying criticism to curricular experimentation. The state university, in this respect too close, susceptible to most of the same forces which warp the school curriculum, cannot perform this function so well. The classics were ejected, modern foreign languages are next, and after that? Perhaps classic British and American literature. These are disciplines deep in the tradition of the private college. The bulletin of the Illinois English Teachers Association published a proposal to digest Shakespeare's plays and translate them into modern prose so that pupils will tolerate reading them. We can support the public-school people who protest these distortions, and if eventually we all must surrender, we can keep the schools reminded of what they have sacrificed.

As the schools find it expedient to yield more and more to the requirements of the average and below-average pupil, the private college can properly insist that they not ignore the superior child, that they provide subject matter and methods to stretch him to his greatest potentialities.

At this moment the private college, relatively free from outside pressures, can take leadership, as the state university might not feel as free to do, in condemning recent attacks on public schools and school texts, a new witch hunt launched by irresponsible pressure groups. See the survey by Benjamin Fine in the *New York Times* for May 25, 1952, or the symposium entitled "The Textbook in



America" in the *Saturday Review* for April 19. These vicious attacks seem shrewdly timed to enlist support from the hysteria over communist infiltration and the turbulence of a national election. The private college should speak out.

What will the college gain from increased intimacy with school affairs? The unimpeded flow into the private college of up-to-date information on what the schools are teaching and how they teach it will orient the college and give it perspective.

We can learn what our freshmen are like, what they have had, where we must begin to build. The high-school transcript is an inexpressive poker face; it reveals little. Placement tests do better, but they leave baffling gaps. The ideal would be a good talk with the high-school teacher of each freshman held as soon as we learn what we need to know about him.

Intimate knowledge of what is taught in high school will reduce the waste of the freshman year. Every September the freshman dean enthusiastically assures us all that we have just admitted the most promising class ever to enter. By March even the dean needs cheering up. The usual diagnoses are homesickness, distraction, confusion of motives, ill-spent newfound freedom. One cause not given proper weight is the shock of discovering how some of the freshman courses are taught. These crucial courses are generally given to inexperienced M.A.'s or Ph.D.'s or even graduate students fresh from the conventional graduate training aimed at research rather than teaching and a long way from their own high-school experience.

Public-school teachers can show us how to teach, or at least show us the need for giving thought to how we teach. By and large, they can teach rings around us. No fifth-grade teacher would emerge alive from a classroom she had entered without every minute of lesson-time accounted for in advance. Last year's plan won't serve. One has to be devised for the pupils who turned up this year. The great George Lyman Kittredge, lecturing on Shakespeare at Harvard, flipped open his text to the line where he had stopped the meeting before. For exactly one minute short of an hour he annotated the text; then he strode out the door ahead of the class. Such college teaching was thrilling done by a Kittredge, but not as done by thousands of his disciples. The conviction is still too prevalent in college that good teaching results when a Ph.D. sits down at his desk with his textbook and begins to talk to a class.

Such are some of the gains to the college from knowing what is taught in school, how it is taught, and the teachers who teach it.

The gap between public school and college exists and will widen if the forces at work to separate the two are allowed to move unopposed. Means for bridging the gap are there. If we do not exert ourselves to use them, the public school will go its way and the private college will slip into a more thoroughgoing and remote isolation.

# PLACEMENT AND FOLLOW-UP OF GRADUATES IN PUBLIC- SCHOOL POSITIONS

CLAUD GRIGG

*Superintendent, Albemarle City Schools*

ALL of us seem to be aware of the need for a more intimate relationship between the faculty and staff of the private college and university and the public schools. No one seems to know the answer to the problem, however. Public-school people are prone to criticize the college, but we have doubtless given little thought to the difficulties encountered by the college. An intimate relationship between the two, it seems to me, would necessitate a considerable staff on the part of the college, and this, of course, would involve the expenditure of a considerable sum of money. The fact that our colleges are concerned about the problem is encouraging.

My subject, "Placement and Follow-up of Graduates in Public-School Positions," is one means by which our colleges can bring about a more intimate relationship between the colleges and the public schools. In fact, in too many instances, this is the only direct contact our colleges have with the public schools. Some of our colleges are becoming more and more aware of their opportunities in this connection, but I do not know any college which is taking full advantage of its opportunity.

Most public-school administrators recognize the importance of a strong teaching personnel, and it is natural that most of us think of the teachers college primarily as a source of teacher supply. I am not unaware of the fact that the college has an obligation to the teacher trainee; however, it seems to me that the primary purpose of the teachers college is to train students for school positions.

We should not overlook the problems confronting the college. We have been passing through a period when teachers have been in short supply. The colleges take the pupils we send them, do the best they can to make teachers out of them, and send them back to us. If we think of the teachers colleges collectively and of a teacher supply for the whole state, the problem becomes a simple one. The prospective teacher, however, thinks entirely in terms of her appointment, and the superintendent is inclined to think of his

particular school system. Too many of our colleges, knowing that any reasonably well-qualified graduate can be placed somewhere, are satisfied simply to see that their graduates are placed.

Recently I wrote to the director of the placement bureau of each of three or four of our colleges inquiring in each instance as to whether he had someone whom he would like to recommend for either of two positions I mentioned. The reply which I received from one of our private colleges follows:

I want to thank you for your letter of recent date listing your vacancies with us. We have notified our June 1952 graduates who would be interested in these positions, and they should contact you shortly.

It is a pleasure to serve you in any way possible.

Sincerely yours

Briefly stated, the following, in my judgment, are important considerations in the proper placement of graduates:

1. The proper placement of a graduate presupposes careful, sympathetic guidance during the period of training and at the time of appointment.
2. Rating sheets should be available which would enable the superintendent or principal to predict with some degree of accuracy the success or failure of a teacher. In this connection I should like to add that my experience has not been too bad. Most graduates with superior rating from any college will make excellent teachers.
3. A successful teacher must be happily situated—in school and in the community. Even rooming at the wrong place or with the wrong people can ruin a year's work for a teacher. It goes without saying, therefore, that a great deal of thought should be given to the school and community in which the teacher is to be employed.
4. All of this adds up to the fact that the director of the placement bureau should know each graduate personally and should be as well acquainted as possible with the school and community to which he recommends the graduate.

So far as I know, none of our colleges is making any real effort to follow up its graduates in the public schools. A fellow superintendent contradicts this statement, but I do not recall that I ever have received a written inquiry from any college as to the success or failure of a teacher, and any oral inquiry which has been directed



to me has been purely incidental. I cannot think of a better test of the effectiveness of a teacher-training program than a follow-up of the success or failure of the teacher. The fact that a teacher does or does not remain in the same place for some time would, of course, be some indication of her success or failure. I am not sure that it is the general practice of colleges even to inform themselves as to the tenure of teachers.

The main purpose of the follow-up, of course, is to prevent the teacher's failure if possible or, still more important, to assist her in becoming a superior teacher.

Getting back to the more intimate relationship between the college and the public school, I should like to say that I have fallen into the habit of turning to one particular college for help more than to any other. The director of the placement bureau has been familiar with our school system for many years. I have asked for help for more than twenty-five years, and the graduates sent to us invariably do good work and remain with us or move on into more desirable situations. I am not sure that this particular institution does any better job in placing its graduates than many others do, and I am not sure that this college is any more responsible for this relationship than I am; however, the fact that this relationship does exist helps everyone concerned. And I believe that the college which purposely brings about the situation which I have described and which came about more or less accidentally could very well become the outstanding influence in public education in the region in which it is located.

# HOW CAN THE FACULTY AND STAFF OF THE PRIVATE COLLEGE AND UNIVERSITY BE BROUGHT INTO INTIMATE RELATIONSHIPS WITH THE PUBLIC SCHOOLS?

(A summary of the two preceding papers and the discussion upon them)

JANE B. WILSON

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WHILE real and intimate relationships between school and college people exist, encouraged generally by personal associations and experiences in the past, by mutual responsibility for individual children, or by common service to particular school systems, nonetheless there seems to exist a widening gap between those who teach in colleges and those who teach in public schools. Surely it would be inaccurate to say that these two groups no longer have common interests and common aspirations. Mr. Grigg and Mr. Bowman have pointed to some of the practical steps that can narrow that gap.

It must be said that they charge the college both with the principal blame for the gap and the duty of closing it. They suggested, for example, that college teachers are ignorant of what is going on in the schools, even in their own subject fields. They do not take full advantage of the existing organizations in which there is opportunity for combining the efforts of college and school people; for example, in the various committees of the National Council of Teachers of English and in the various state associations devoted to improving instruction, setting up curricula, and extending the public understanding and support of their respective subjects.

It was said in defense of the college teacher that there are limits to his time and energy, and that college administrators do nothing to encourage or make possible, by either assignment or reward, the instructor's participation in the work of the schools. The colleges thus evade, among other duties, the necessity of fighting trends in high-school curricula inimical to a liberal education; the selfish necessity of fighting political pressures upon the schools, a fight that the politically independent private college is particularly fitted to

undertake; and the necessity, for the student's sake, of knowing what the student's background and experience have been.

That last necessity would require that college people visit the school people frequently enough to be intimate with their problems. This is a theme often heard in this conference. Mr. Grigg played a variation upon it when he said that the colleges must have a real knowledge of the communities and the school systems they send their graduates to. Otherwise mutual dissatisfaction may arise. He further suggested need for care and thought in the whole matter of teacher placement, which could arise only from real interest in the problem on the part of college departments and employment bureaus.

Would it not be well for college teachers to know and understand their students as well as the good elementary teachers knew them as they guided them through a formative period? Personal knowledge of those young people could be supplemented, after they graduate and go out to teach, by careful "follow-up" visits and correspondence. Fitting people to life work in desirable situations is an exacting task.

I should like to point to two straws in the wind that, it may be hoped, indicate a return to co-operative activity when bodies recognize that they have something to contribute to each other.

A committee of the North Carolina English Teachers Association invited the North Carolina Library Association to participate in the compilation of a handbook of North Carolina writers, a project which has fruited amidst mutual satisfaction and understanding. In another direction, there is the example of the Science Teachers Laboratory Conference at Duke University, a meeting of college and high-school teachers that is both inspirational and immediately practical.

# POSSIBILITIES OF INTEGRATION OF PROFESSIONAL AND SUBJECT-MATTER COURSES IN A LIBERAL-ARTS COLLEGE

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THE word "integration" denotes different things depending upon the purpose for which it is used. For our purpose, it may refer either to a mechanical organization between subject-matter and professional courses or to a development of common insights, understandings, and points of view. The latter meaning is the more significant. If it were achieved, the former would be sure to follow. In pragmatic social psychology, the second usage is synonymous with the development of a significant symbol. Each respondent to the symbol—in this case integration—may react differently to it, yet all of the respondents share a common understanding, and each respondent expects certain reactions from the others which they fulfil in their reactions. Stated differently, integration as a significant symbol involves the development of a common language so that we can communicate intelligently with one another and can engage in co-operative behavior.

*Obstacles to Integration*—We might as well face reality in a forthright manner and recognize the obstacles to the integration that we are to consider. A first obstacle is the rule of the dead in the tradition of liberal-arts colleges. The graduating senior is a cultured person—that means he is without vocational training. He is a scholar—that means he disdains manual work. He is interested in research—that means he wants to be alone in the library or in the laboratory. He is a well-rounded person—that means what it says.

A second obstacle is specialization on the part of faculty members. Each member realizes that he must specialize if he is to become an authority. The more he specializes the less he becomes an authority on many things; but he is an authority on something. This gives him security, prestige, promotions, and salary increases. Such administrative pressures stimulate individualistic behavior in specialization but they destroy the faculty member's effectiveness as a team worker.

A third obstacle is the sacredness with which a subject-matter teacher regards his departmental field. He lives so much within

the specialized vocabulary of his department that he is unable to communicate with members of other departments unless it be on nontechnical matters. He sees, let us say, only the economic man despite the fact that the rest of us see only a human being. Now, in this situation, one might well ask, Who is the insane person? He forgets that his department is an abstraction in point of view, yet he makes the segment that he sees equivalent to totality. He is unmindful of the fact that his department did not always exist: that there are historical changes in his subject-matter field. Nevertheless, he seeks to perpetuate the status quo unto eternity. He is in love with his department. He cannot detach himself from it and see it objectively as others can.

A fourth obstacle is the reluctance of the subject-matter teacher to experiment. His attitude against trying anything new by way of integration is so contradictory to the usual experimental attitude in his departmental field that you wonder if the man is completely integrated or if he is a diplomat whom we may think of as a professional liar. To say that an integrated course offering will not work before it has been tried is somewhat unscientific. To say that your department is not concerned with the training of teachers bespeaks a closed mind—a logic-tight compartment. Bernard Hart refers to this in one of his chapters on insanity where he deals with fixity of responses.

A fifth obstacle is a holier-than-thou attitude that exists in subject-matter departments. They pride themselves on how technical, how difficult, it is to master their subject matter. This is a form of self-exaltation since presumably the teacher has mastered the field. At least, we hope that he has. They look at the courses in education and ask, "What are all these courses for?" They give that down-the-nose look which breaks into a sneering grin. "What crap courses these are," they say to themselves. The only way this holier-than-thou attitude can be overcome is to entrap these people in sin.

*Possibilities of Integration*—Keeping these obstacles in mind, let us now consider some of the ways in which integration between subject matter and professional courses might be accomplished. Although I shall not mention specific names of institutions, may I assure you that most of these ways of integration have been successfully undertaken at one or more institutions of higher learning.

The members of a department of education might invite the subject-matter teachers to visit with them the public-school classes in order to observe the problems of the classroom teacher. This



device focuses attention upon three aspects of the problems that are observed—the child, the teacher, and instruction in subject-matter area. If the subject-matter teacher were genuinely interested in the visit and in observing, he would be likely to discuss with his colleague in education ideas for improving the situation. This is the beginning of a common language and integration. In this procedure, verbal disputes about integration and prejudgments about integration are by-passed. Attention is centered upon the reality of a problem where advice is sought and exchange of ideas is invited. Subject-matter teachers are as susceptible to flattery as anyone else.

A second possibility of integration is a little out of the ordinary. It is a common practice for a subject-matter teacher to give the course in methods for a particular area and for an education teacher to give supervision of practice teaching. It may seem to be a waste of manpower to have two supervisors, but wherever both teachers could be secured for supervision of practice teaching of the same student, I am certain it would pave the way for integration. The practice teacher is the product of the subject-matter teacher as much as of the education teacher; both are responsible for this newly created teacher. Using the lingo of the subject-matter teacher, the question is often asked, "Why don't they teach these kids something in high school?" Maybe if the subject-matter teacher supervised some practicing teachers, a personal confession would be forthcoming in answer to this question.

A third possibility is correspondence with former students who have completely served their terms and are again free persons. Such students could be expected to write frankly and critically about the weaknesses and strengths of their preparation for teaching. They should know the kind of integration of subject-matter and professional courses that would have been most beneficial to them. If a university administrative official presented such information, especially the weaknesses, to the faculty members involved, with the request that something be done about it, I cannot imagine that they would sit back and say, Whom does he think he is talking to?

These three suggestions have one common advantage over those that follow. Their point of departure is a jointly observed problem or a reported problem. Neither the education teacher nor the subject-matter teacher feels personally censured. Instead, they are both put on the defensive to do something about the problem.

If the subject-matter departments insist that their primary task is research, there would still be possible some integration. The

average elementary and secondary school teacher has little time to compile information, and less time to discover new information. There are four areas of research in which the subject-matter teachers could make a very positive contribution to school teachers with the aid of their colleagues in education. Additional knowledge is always needed about child and adolescent behavior, interests, habit formation, and how to correct the various problems of these ages. The role of the school in the community is not completely known. It changes with other societal changes. This is information that both school administrators and teachers could utilize. There are other educational agencies in a community beside the school, but our knowledge about these is scattered. Finally, the characteristics of the communities and neighborhoods from which the school children come would be invaluable in understanding the children and in guiding the instructional program. There is hardly a subject-matter area that could not do research in one or more of these areas. For this research knowledge to be usable by the schools, it must be organized for teaching purposes and written at the language level where it will be used. These local resource units prepared by the educational staff would vitalize greatly the instructional program. Motivation and interest in the children would in all probability be greatly stimulated. Incidentally, I believe that almost any industry would welcome a research project on their products if there were any assurance that the information would eventually serve as teaching material.

Passing to the next possibility of integration, one might seriously question whether there is a single primary objective for subject-matter departments. If only 10 to 15 per cent of our school children go to college and if only a small percentage of our college graduating seniors continue their formal schooling, maybe there should be at least a second objective. In addition to the development of research and competent knowledge, there should be preparation for democratic citizenship in the broadest meaning of this term. An integration of courses will follow in part from a basic re-examination of the college objectives. There are several phases to this integrative action. For one thing, since only a few college students will ever use much technical knowledge, the majority of undergraduates will have more usable knowledge if more courses are directed toward living in a democratic world. Those students who become teachers would be greatly benefited from this new orientation because of the direct application of their learning to their own teaching. Again,

the future college teacher, a product of this recognition of other objectives, would probably have a better grasp of the functions of the total college, would be able to work more effectively with his colleagues, and would possess more understanding of the interests of young people. In some respects the leadership of the colleges and universities in general education has been displaced by that of the public schools, which developed the core curriculum, experience curriculum, correlated subject-matter areas, etc.

A sixth kind of integration, involving the curriculum committee and the general faculty, pertains to changes in the curriculum. I shall deal with it under several subheadings. With a few exceptions curriculum committees and subject-matter departments insist that the titles of courses cannot be similar or identical in different departments. This policy obstructs integration and is not defensible. If each department has a different set of concepts with which it discovers knowledge and through which it organizes knowledge, then more than one department might conceivably give courses with the same titles. The courses would be different because the approaches would be different; the questions asked and the answers given would be different. At one institution four departments give a course in social psychology, and each of the four courses is different. In this way, you achieve a differentiated unity. If this were permitted throughout a curriculum, much more integration could result. Another curriculum suggestion is the establishment of divisional majors instead of just departmental majors. This will be of much service to the future teacher of a general-science course or a problems-of-democracy course. Only in the very large schools systems do we have many teachers who teach a single subject. There would be a minimum of course reorganization in this proposal. The next two curriculum changes do involve course revision. In teacher training it is desirable to organize the material for learning in a form and setting similar to or identical with that in which the future teacher will use the material. Accordingly, courses in social science, general science, current events, etc. would provide integrated knowledge if they were conducted properly. Or, senior seminar courses might be offered—one each in the humanities, the natural sciences, and the social sciences. These might be conducted jointly by members from the education and subject-matter departments. These courses would integrate the knowledge acquired from the more technical subject-matter courses. Instead of charging the student with the responsibility of integrating the knowledge from

all of the separate technical courses he has taken, the integration would be guided by experienced teachers. These seminar courses would be designed for teachers in training, being more functional than technical or theoretical. These curricular changes might be implemented through the establishment of dual professorships. The teacher who fills such a position would be trained in both education and subject-matter areas. He would be the liaison between the two departments. Through such teachers interdepartmental committees could be set up to study and to improve the integrative activities in question. Where the methods courses are taught by subject-matter teachers there exists the nucleus of such implementation.

A seventh kind of integration that has been profitably pursued in many colleges is the use of institutes, workshops, and conferences. It is important, of course, that both educational and subject-matter teachers participate in these as well as the public-school teachers and administrators. If all of these participants were present, there would be usually a surprising realization that all of these others as well as ourselves are human beings. To a considerable extent, we dehumanize the persons with whom we do not co-operate. This reconfirmation of each of us in the eyes of the others as human beings facilitates the identification of interests, the use of indirect suggestions upon one another, and the future co-operative endeavors in solving teacher problems. These institutes, workshops, and conferences are like the digestion of a good book which is opened with expectation and closed with profit.

If any of the previous kinds of integration can be effected, then this final possibility of integration may be feasible, that is, the creation of a college school clinic. Co-operation between the subject-matter teachers and the educational staff would be needed for such a school clinic to operate fully. This would be a follow-up service to those graduates of a college who are now teachers and who need help in dealing with their school problems. Certainly with all the specialists in a college or university, almost any conceivable problem could be handled.

In conclusion, we should be mindful of the fundamental changes in the perspectives of college and university faculties. A number of these are definitely in the direction of integration. Some do not involve integration between subject-matter and professional courses, but these latter are sure to emerge as the trend of integration continues. One of these is the introduction of survey and orientation courses. Usually these are given by members from several depart-



ments. This is a growing practice. Another integrative trend is interdepartmental research or the offering of courses in several departments which collectively prepare a student for the same function in society. Industrial management combines engineering and business administration; personnel combines economics, psychology and sociology; biochemistry is obviously a combination of two different fields of learning. A third basic integrative trend is the new conception of causation. The Newtonian mechanical conception of a single cause-and-effect relation has given way to multiple causation; to the integrative action of the entire nervous system; to gestalt psychology; to behavior as a function of the total situation; to the interaction of heredity and environment.

The rapid growth of new knowledge, inventions, and specialized ideas will either force us into greater integration between professional and subject-matter courses, or create utter chaos in the generations of children and youth ahead. Let us momentarily look ahead two thousand years. Will each person attend school until he dies in order to accumulate all of the specialized subject-matter knowledge or will the knowledge that is more related to daily living be selected and integrated into new sequences of courses? Integration between professional and subject-matter courses in the present is more likely to follow once the respective faculty members become keenly conscious of the needs for integration.

# THE NEED FOR INTEGRATION OF PROFESSIONAL AND SUBJECT COURSES IN TEACHER EDUCATION

BENJAMIN LEE SMITH

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OUR day is beset with belligerency, with hot and cold wars, with sharp rivalries, with keen competition, with caustic criticism, with frustration and distraction, with high tension and taut nerves—not only in international affairs but also in institutional and personal life. There is need of simplification. We must find some serenity, some possession of our souls, some sense of security, some hope for the on-going and improvement of the world, some realization of peace lest we succumb to fear, lose our sanity, or die of apoplexy.

Fortunately there are centripetal forces as well as centrifugal; there is co-operation as well as competition; there is synthesis as well as analysis; there is integration as well as separation.

Education is a co-ordinating force. Its goal has long been expressed for the individual in such terms as "complete living," "well-rounded life," "well adjusted personality," "life of integrity"; and for society in such terms as "good citizenship," "a good social order," "national unity," "international brotherhood."

Even in education, however, we have a yen for specialization—this "more and more about less and less." We have the jealousy, the contempt and condescension of one subject field for another and of one level of education for another. Many teachers colleges want to be liberal-arts colleges, many colleges want to be universities, many high-school teachers think the acme of perfection would be to teach in college, many undergraduate teachers want to teach graduate students, and many graduate teachers want to do research. For our discussion this afternoon it is pertinent to observe that there exists particularly acute rivalry and condescension, not to say contempt, between the professional and academic departments in some institutions where teachers are being educated. Too many share the view of a cynical old man who said, "They that can, do; they that can't, teach." The teachers are the victims, and what is worse the children are the victims. Somehow we must reconcile these dif-

ferences and resolve these problems. There is need for integration of professional and subject courses.

Integration has a variety of meanings. I do not subscribe to the proposition that they who have the best to teach naturally have the best way for teaching it, nor do I accept the position that one can teach any subject well if only he knows how to teach. There must be some combination and co-ordination of courses that will give better preparation than the extreme specialization in either area. Many institutions are conducting experiments. Many individuals are exploring ideas.

There are a number of definitions of general education. I do not accept some meanings applied to the term, but I do believe that there are certain essential knowledges and skills that are desirable in the education of all, and that there are certain experiences and certain bodies of information that are unifying and beneficial for all. I shall leave to others the interpretation of specific definitions and the relating of types of integration and general education. I am at this time simply presenting my own endorsement to broad, underlying *general principles*.

It will be my purpose to indicate if I can that there is need for understanding that there is interrelatedness in life, that public education is important, that college and university administrations and the faculties of subject fields have a responsibility to integration—specifically that Duke University has a responsibility to it. With that concept of the world in which we live and of the place of public education in society, I hope that the need for co-operation and co-ordination will be seen. Possible and desirable integration of professional and subject courses should then result as a matter of course. Without that understanding and attitude no devices and no assignment of materials will effect it.

Underneath and back of this need of the integration of professional and subject courses there is need of understanding of certain underlying concepts, as follows:

1. The nature of the universe.
2. The political philosophy of the United States of America.
3. The importance of education.

If we can achieve this understanding, the need of integration of professional and subject courses will be apparent, and we shall be in favorable circumstances for finding a solution to our problems.

All there is time for here and now is to make a suggestion and give a reminder. You may extend the bounds and fill in the details.

First, let us recall that we live in a universe of law and order, that the sun, the moon, the stars, and this earth are held together and keep to their courses. The water and land, and plants and animals are interdependent. There is system, and unity, and cohesion. Some of our seers caught a glimpse of the nature of creation and the beneficence of relatedness. William Blake observed:

To see a world in a grain of sand,  
And a heaven in a wild flower;  
Hold infinity in the palm of the hand,  
And eternity in an hour.

David said:

The heavens declare the glory of God  
And the firmament showeth his handiwork.

Tennyson thought he could understand the whole universe if only he could understand the flower in the crannied wall. When the bell tolls, "it tolls for thee." When liberty is in jeopardy anywhere, it is in jeopardy everywhere. Every teacher in every subject field needs to remind himself that not only his subject but every other subject is related to the whole scope of life and to the full extent of the universe. No one subject holds a monopoly upon skill or culture or worthwhileness. Each is important to the extent that it contributes to the completeness of life in the individual and in human society.

Second, if we are to see the need for the integration of professional and subject courses, we must understand that the government of the United States of America exists to serve the well-being and welfare of its citizens. It has taken for its motto: *E pluribus unum*. A constitution was ordained and established "to form a more perfect union, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." The pledge of allegiance to our flag commits us to devotion to "one nation, indivisible, with liberty and justice for all." It is a government of the people, by the people, for the people. It derives its just powers from the consent of the governed. It recognizes the worth of the individual. Our citizens have come from many lands to an open door of opportunity; they hold varying religious views and the right to worship God according to the dictates of their own consciences; they are free to choose their own life work and to go in their careers as far as their abilities and their efforts will enable them to go.



At its best our country wants to lead—"Not merely in matters material, but in things of the spirit; not merely in science, inventions, motors and skyscrapers, but also in ideals, principles, character; not merely in calm assertion of rights, but in glad assumption of duties; not flaunting her strength as a giant, but bending in helpfulness over a sick and wounded world like a Good Samaritan; not in splendid isolation, but in courageous cooperation." To this end every teacher of whatever subject has an obligation. To the end that men may live abundantly and enjoy the resources of nature, the young are taught, books are written, truths preserved, beauty cultivated, research done.

Third, the perpetuity of our nation and the realization of the good life for the individual and for society depend upon education. George Washington, the father of our country, said in his final message to his countrymen that we must "promote as an object of primary importance, institutions for the diffusion of knowledge; for in proportion as the structure of government gives force to public opinion, it is essential that public opinion should be enlightened." This truth through the years has been re-enunciated by all our wisest and greatest leaders.

Only a few days ago Dr. James Conant, president of our oldest and most distinguished university, gave the full weight of his endorsement to public secondary education as the means through which we may maintain national unity. Among other things he said, "The vast expansion of secondary education in this nation has created a new engine of democracy; it is of the utmost importance how this engine is to operate in the future. If we so desire, it can be used to restore fluidity to our social and economic life of each generation and in so doing make available for the national welfare reservoirs of potential talent now untapped. At the same time, by stressing the democratic elements in our school life and the comprehensive features of our organization, we can promote the social and political ideals necessary for the harmonious functioning of an economic system based on private ownership but committed to the ideals of social justice."

Henry Steele Commager declares our schools have kept us free. He says, "No other people ever demanded so much of education as have the American people. None other was ever served so well by its schools and educators." He lists three tasks which our triumphant faith in education has imposed on our schools: to provide an enlightened citizenry in order that self-government might work; to

create national unity; and to Americanize millions of immigrants.

The centrality of education for a democratic society lies not in the colleges and universities but in the public school. But the colleges and universities ought to make a contribution to it. Public education is everybody's business! No university that does not offer teacher education can discharge its full responsibility.

No teacher, in whatever subject field he may work, has done his job who has not contributed to the preparation of primary and secondary teachers who must impart the broad, general subjects and the specific, essential skills necessary to qualification for good citizenship. Our ministers, our doctors, our lawyers, our engineers and all others must first get those elementary skills and essential knowledge which are useful for every citizen regardless of his profession or vocation. That foundation must be broad and sound to make possible the superstructure of specialization.

Where are college students to come from if not from the secondary schools that look to the colleges for the preparation of teachers?

Surely there is need that the divinity school impart to teachers something of the moral and spiritual values. Surely the school of medicine has a contribution to make to health and physical fitness. Surely the history department has something to offer by way of appreciation of our heritage and by way of knowledge of rights and responsibilities. Surely every field of study has something of worth to give.

It is my opinion that the institution that neglects to prepare teachers for the primary and secondary schools destroys its existence with its own hands and the subject department that fails to make a contribution becomes a parasite upon the body of education.

We are celebrating this week the service rendered by Duke University and its antecedents to teacher education. This is the centennial of the founding of Normal College—the first institution chartered in North Carolina to grant degrees and make its graduates eligible for certificates without further examination. When the state was in the clutches of illiteracy, when the qualification of teachers was a reproach to the profession, when an infant school system was struggling for existence, Braxton Craven became a pioneer in teacher education. He saw the need and the opportunity for service. Against great odds he secured the recognition of the legislature. With small funds he financed the venture. With his own splendid talent and deep devotion he taught the first courses. Further, he supported the creation of the office of Superintendent of

Public Instruction. He gave himself and his institution to beginning the normal institutes long before McIver and Alderman became famous conducting them. Braxton Craven identified himself with the cause of public education. Even under the gathering clouds of war, the prostration of conflict, and the perplexities of Reconstruction, he carried forward a noble service in Normal College and its successor, Trinity College. It is well to remind ourselves that before there was a Duke University, there were Normal College and Trinity College. Before this institution undertook to train men for the ministry, it was committed to the education of teachers.

John Franklin Crowell during his administration at Trinity College was an influential factor in support of public education. In a commencement address at Winston on the topic "Numbers," he said, "The public school system, I unhesitatingly maintain, is the one and only institution that can deal efficiently with these vast numbers in preparing them for a share in the government of the nation."

Near the close of his address Crowell explained why he was speaking so strongly concerning public schools:

I have tried to exhibit some of the modest and hidden, yet real merits of our common-school system as an agency creative of public spirit and preservative of national life. I have done so to reassure the public confidence in schools and more especially to quiet those who are so diligent in scattering doubt as to whether these schools have come to stay. However that may be I know not, but of this I can assure you, that the moment the common schools of this State disappear from among its institutions, that day shall I strike my name from the roll of its citizens and depart, shaking off the dust of my feet in testimony against it. But I believe better things than political suicide of this Commonwealth.

President Crowell made a "Program of Progress" report to the General Assembly of North Carolina and concluded with an exhortation as follows:

The realizations of the next generation will be measured by the standard of progress you make for these prospective citizens. Make your votes the helper of the public schools, for they are after all the only direct builders of the state. . . . It make take years to reach all I have outlined here, but what is time to us who work with the purpose that runs through the ages? When our plans fail and our purposes seem to come to nought, we can say . . . "We can wait."

Dr. John C. Kilgo joined Supt. Charles Mebane, Josiah William Bailey, and others in securing from the North Carolina General

Assembly the first \$100,000 appropriation for the public schools before Charles B. Aycock became governor and while it was considered by some an act inimical to the state university. Dr. William Preston Few held membership in the North Carolina Education Association for more than a quarter of a century and was on call for the public schools throughout his administration of Trinity College and Duke University. Dr. E. C. Brooks, Dr. Holland Holton, Dr. A. M. Proctor, Dr. B. G. Childs, and others have through this institution served the teaching profession and the state of North Carolina.

What of the future?

When the indenture creating Duke University was written, Mr. James B. Duke prescribed that "A School for Training Teachers" be made a constituent element of the university. He specified that the faculty be men of "outstanding character, ability and vision" and that "Discrimination be exercised in admitting as students only those whose previous record shows character, determination and application evincing a wholesome and real ambition for life." He advised that the courses be arranged, "First, with special reference to the training of preachers, *teachers*, lawyers and physicians because these are most in the public eye, and by precept and example can do most to uplift mankind. . . ."

I am very proud of Duke University and the service she is rendering. As an alumnus who caught here a vision of the importance of public education and the zeal to devote my life to the service of mankind through that medium, it is disappointing that whereas a divinity school, a school of medicine, a school of law, and others not mentioned in the indenture have been inaugurated, Education has not kept pace.

I express the profound hope and the confident expectation that this Centennial Celebration may be the occasion for the reconsideration of the importance of teaching to society and of the duty of this institution to that great service. There exists an unfinished task. Public education is still important. Teachers are still needed. Something significant may yet be done to rectify certification requirements, co-ordinate effort, and secure needed integration. The best curriculum has not yet been devised nor the best technique employed. Glorious as the past is, there yet lies ahead a nobler service.

Duke University could unquestionably render valuable service in other fields of endeavor, but it cannot be true to its traditions or



to its indenture unless it continues to prepare teachers and administrators for the public schools and colleges of this country.

If its administration and the faculties of its several colleges and graduate schools can catch a vision of the relatedness of the universe, the dependence of democratic government, and the importance of public education—if they can understand the need of the self-perpetuation of the quality of its student body and of the continuity of its own educational service, then we shall have here not only integration of professional and subject courses, but also integration of this university and public education and integration of this university and the moral universe in which we live.

# HOW CAN THE INTEGRATION OF PROFESSIONAL AND SUBJECT-MATTER COURSES BE ACHIEVED?

(A summary of the two preceding addresses and the  
discussion upon them)

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**B**OTH papers were well adapted to the central theme of this conference. Superintendent Smith, in his paper, gave cognizance to the turbulent conditions of present-day society and pointed to education as the co-ordinating force for improvement. Anxiety was expressed about our overspecialization in society and especially in public education. Greater integration of professional and subject courses in our colleges was emphasized as essential. All departments of a college were recognized as having areas of knowledge which would be of value to prospective teachers. Mr. Smith made the frank statement that "The institution that neglects to prepare teachers for the primary and secondary schools destroys its existence with its own hands, and the subject department that fails to make a contribution becomes a parasite upon the body of education." Mr. Smith appropriately focused his remarks upon Duke University, whose past contributions in teacher training are being celebrated this week. In referring to Duke's present and future obligations and opportunities, Mr. Smith emphasized that the indenture creating Duke University prescribed "A School for Training Teachers" as a constituent element of the University. Whereas a divinity school, a school of medicine, and a school of law, and others not even mentioned in the indenture have been inaugurated, disappointment was expressed over the fact that education has not kept pace. It was concluded that Duke may render valuable service in other fields of endeavor, but "It cannot be true to its traditions or to its indenture unless it continues to prepare teachers and administrators for the public schools and colleges of this country."

Dr. Schettler agreed to a need for integration of professional and subject-matter courses in a liberal-arts college, and in his paper referred to various obstacles and "possibilities" of such integration.

The following obstacles to desirable integration were elaborated upon:

1. Rule of the dead in the tradition of liberal-arts colleges
2. Overspecialization among faculty members
3. Sacredness with which a subject-matter teacher regards his departmental field
4. Reluctance of the subject-matter teachers to experiment, and
5. A holier-than-thou attitude which exists in subject-matter departments.

Despite these obstacles, evidence was produced that they are surmountable. At least seven possibilities of integration were referred to—they were not entirely theoretical but practical—and found to be working effectively in several institutions experimenting with them. Among the numerous possibilities for greater integration, institutes, workshops, and conferences were suggested. Professor Schettler conjectured that if professional, subject-matter, and public-school teachers, as well as school administrators, would participate together in such meetings, understanding and respect for each other would accrue.

That the two papers were complete and convincing was evidenced by the fact that relatively few criticisms and comments followed in the discussion. With respect to teaching moral and spiritual values, Professor Myers, of our Department of Religion, stated that that responsibility should not be departmentalized, nor postponed to the graduate period. Several persons expressed the opinion that much integration would be engendered if education instructors and subject-matter teachers would frequent public-school classrooms to observe firsthand the problems of teaching present-day youth.

# POSSIBILITIES OF INTEGRATION AMONG SUBJECT-MATTER DEPARTMENTS TO AVOID NARROW SPECIALIZATION

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I HAVE interpreted the title assigned to me rather freely and treated it as in effect a directive to consider how we can improve the training of students who plan to teach science in our high schools. I will confine my discussion to the natural sciences because that is the only field in which I have had enough experience to make any worthwhile suggestions. Furthermore, the problem of teacher training probably is more difficult to cope with in the natural sciences than in any other field; hence it deserves particular attention.

This problem must be considered in relation to the content and objectives of high-school science courses. According to the State Department of Public Instruction, in 1949-50 the distribution of science courses offered in 953 North Carolina high schools from the ninth to twelfth grades was as follows: biology was offered by 893 schools, general science by 703, chemistry by 481, and physics by 351. Thus the most frequently offered science courses are biology, a composite of botany and zoology, and general science, a composite of all the sciences, which usually, like an old-fashioned Mother Hubbard dress, covers everything but reveals nothing. The high-school science teacher, therefore, is usually required to teach courses which require some knowledge of the fundamentals of two, three, or even four fields of science. Since teaching assignments are determined more often by the size of the enrollment than by past training, teachers often find it necessary to teach science courses for which they have had little or no training.

The sad fact is that the average college curriculum is not very well adapted for training students to become high-school science teachers. In college students are encouraged and even compelled to concentrate and to specialize. Most students, even those planning to teach science, take elementary courses in only two or at the most three sciences. Obviously, this does not prepare them adequately to carry the typical load of a high-school science teacher. As mentioned previously, there is little or no specialization in high-school



science teaching, teachers being expected to teach biology, general science, chemistry, occasionally physics, and sometimes a few non-science courses to round out their load.

We must consider the objectives as well as the content of high-school science courses, because their objectives have considerable bearing on the type of training required to teach them. If mere descriptions of scientific phenomena are sufficient, for example the naming of the appendages of a grasshopper or the parts of a flower, learning the properties of some elements, or a few of the laws of physics, then a very limited training might suffice. Unfortunately, this is about all that is done in some science courses, and sometimes this is done poorly. Actually we ought to accomplish much more. Students ought to learn some of the fundamental facts and principles and the applications of these principles to familiar phenomena of everyday life, rather than memorizing long lists of isolated facts. Learning the parts of a flower is unimportant compared to understanding how a seed develops and germinates, and knowledge of the life cycle of an insect becomes more important and interesting to the student if he is shown how this knowledge is important in controlling insect pests. It is foolish to teach the principles of physics without showing how these principles make possible the telephone, radio, and refrigerator, or to teach chemistry without referring to its role in the development of such familiar things as synthetic rubber, plastics, photography, or soap.

Furthermore, students ought to learn something about the methodology of science. President Conant of Harvard in his book *Science and Common Sense* claims there is no such thing as the scientific method, but he believes that one can at least show how science and scientists work. Perhaps students ought to learn something of the limitations of science so they will not become easy victims of pseudoscientific quackery. (Advertising of chlorophyll in toothpaste is a good example.) They ought especially to learn what constitutes acceptable scientific evidence, in contrast to the untested hearsay on which so many beliefs and statements are based.

To accomplish all of this requires teachers with a sound understanding of fundamental subject matter and sufficient self-confidence to depart from the textbook when it seems desirable. The teacher thus is able to adapt his material to his students and to the locality, to improvise and to take advantage of learning situations as they arise. The poorly trained teacher, on the other hand, is a slave to the textbook and unable to deal with anything outside of it.

How to train teachers to accomplish these objectives and to deal with the varied subject matter which they must teach is a more difficult problem, I believe, than the training of teachers for almost any other field. I have no easy solution of this problem to offer, and indeed I doubt if there is any easy solution. I do believe, however, that we can materially improve the training of our science teachers if science departments and education departments are willing to co-operate in the program.

Various methods of training science teachers have been proposed and practiced with varying degrees of success. It is sometimes said that we can provide the desired training by means of survey courses in biology and the physical sciences. This would certainly avoid overspecialization, but I regard it as unsatisfactory because survey courses do not give the training in fundamental principles required for effective teaching. One cannot be expected to teach fundamentals effectively unless he himself understands them, and he will not get that understanding from a survey course because survey courses do not deal with fundamentals in a thorough manner. Neither can he get it from courses in methods and materials, helpful as they may be to the beginning teacher. It seems that there is no satisfactory substitute for thorough basic courses in the various sciences, because there is no satisfactory substitute for a thorough understanding of basic subject matter and general principles.

This line of reasoning leads to the conclusion (I am tempted to say the unpalatable conclusion) that the best training for high-school science teachers is to take a good introductory course in each of the sciences to be taught. Since so many teachers are expected to teach two or three sciences, often including biology and general science, they should have training in four different fields—botany, chemistry, physics, and zoology. Probably they should have two or three additional courses in one science in order to understand better the content and methods of at least one field of science. This also would eliminate any tendency to feel that one learns all about a particular field of science by taking the introductory course, an error rather common among college students. It should give the breadth of training necessary for the high-school science teacher and the specialization necessary to understand a science.

Such a program is often difficult to carry out, particularly for students who decide late in their college career that they wish to teach science. Furthermore, it must be admitted that not all introductory courses are well adapted to the needs of prospective

teachers. Some introductory courses seem to have been developed largely for those students expecting to specialize in that particular field and pay too little attention to the needs of the student with more general interest. This is less of a problem, however, than that of finding time for the desirable amount of course work.

The only satisfactory possibility of reducing the time spent in science courses seems to be the development of one-semester courses, preferably open only to upper-class students who have had the usual introductory work in one or two other fields of science. For example, a student who is majoring in chemistry or physics might take semester courses in botany and zoology, and students majoring in botany or zoology might take a semester course in physics.

Development of such courses is possible only if there is a high degree of co-operation between the departments, because considerable integration of material is necessary. For example, plants and animals have many processes in common. The same principles of heredity apply to both; they use the same materials as food; enzymes are involved in digestion and other metabolic processes of both plants and animals; diffusion and cell division are common to both. All of these topics are usually considered in botany courses and also in zoology courses, but they might easily be distributed between the integrated semester courses which I am proposing. Chemists and physicists doubtless could find ways of integrating the work in their courses, and it might be possible to develop well-integrated semester courses in certain other fields, particularly the social sciences.

Well-organized semester courses of the type proposed might be useful and profitable to many other students besides prospective science teachers. Students majoring in English or history, for example, often desire some knowledge of plants and animals, but they seldom have time or inclination to take a year course in botany or zoology. Courses with general appeal probably would be more desirable than special preprofessional courses for teachers, which are likely to be unduly specialized.

There seem to be two obstacles to the development of one-semester courses of this type: (1) The limited numbers of students who would take them, and (2) The feeling of many science departments that, since they cannot cover the essential material in their present two-semester courses, it is hopeless to consider doing so in a one-semester course.

The first difficulty might be met by giving the courses in alternate years, although if they were well taught, enough juniors and seniors might elect such courses to justify offering them every year.

The second difficulty is a real one, but not insurmountable if the courses are made sufficiently selected in coverage. It is obvious that many topics found in year courses must be omitted from a one-semester course because it is much better to teach a few topics thoroughly than to skim over a larger number hastily and superficially. This requires ruthless elimination of many interesting items, some doubtless dear to the instructor, in order that emphasis may be placed on the most important general principles. The success of such courses depends nearly as much on what is omitted as on what is included. It also should be kept in mind that students in such courses would be older, more experienced, and generally better motivated than those in freshman courses. They should be able, therefore, to complete considerably more work in one semester than can be covered in a freshman course. Our experience with the V-12 program during the war indicated that a remarkably large amount of work can be covered in one semester by mature students. While such courses do not constitute the ideal method of training prospective science teachers, they are a practicable method of meeting the existing situation and are certainly much better than no training.

The most difficult problem in connection with development of such courses, probably, is to persuade the departments involved that such integrated semester courses are desirable and practicable.

To summarize, it seems clear that students preparing to teach high-school science need broader training than most of them are now receiving. This can best be provided by good basic courses which emphasize subject matter and fundamental principles and indicate their applications to familiar situations. In many instances introductory science courses already in existence serve this purpose, but it is difficult to fit enough of these courses into a four-year program. There is need to consider the development of integrated one-semester courses in related fields of science to give prospective teachers the most important facts and principles in each of the fields which they may later be required to teach. Development of such courses will require a high degree of co-operation between the departments concerned, but the results ought to justify the effort. There also is need to consider the relaxation of some of our regulations in order that graduate students may take undergraduate courses which might be useful to them.



In conclusion I regret that I cannot recommend any easy or short-cut method of training science teachers which eliminates the necessity of considerable specialization in subject-matter courses. The suggestions I have made are presented as a basis for discussion and not as any final solution of the problem.

# THE PLACE OF SUBJECT-MATTER SPECIALIZATION IN THE CURRICULA OF THE PUBLIC SCHOOLS

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SINCE this is a centennial occasion I think that I will be pardoned if I tell my Rip Van Winkle story, even though there are those present who have heard it before. It seems to be a very little known fact that old Rip Van Winkle had a son. Now this son developed an inferiority complex because everything that he did was overshadowed by his father's reputation for having slept twenty years. One day he went off beside a little road and went to sleep, and instead of sleeping twenty years as did his father, he slept a hundred years. When he awoke, he was surprised to find that the little road had become quite wide and was covered with a hard black substance with which he was totally unfamiliar. Suddenly, he saw a great monster bearing down upon him, and as he jumped for safety, it roared by with terrific speed. Young Rip took off across a near-by field and was startled as he beheld another monster coming towards him. This time he ran to the top of a high hill and had barely reached its summit when he saw a great bird swooping down out of the sky with outstretched wings and with a roar that seemed to shake the earth. Terrified, but with unerring judgment, young Rip hurried to a place of refuge familiar to his youth. And when he opened the door of the old school house, he felt perfectly at home—it had not changed in a hundred years!

You and I know that this is a ridiculous story. Yet we are a little troubled to explain just why it is ridiculous. The one- and two-room frame school house has almost disappeared from the landscape. A number of styles of architecture have evolved and had their day. We have gone from A roof to flat roof to A roof and back to flat roof again. There is always a danger that we may confuse architectural progress with educational progress. The two may go together, but it is by no means certain that they will. This applies to colleges and universities as well as to public schools. We need to be extremely critical of what goes on inside—not cynically critical but constructively critical.

If young Rip had come out of his slumber during the last school term in almost any community in North Carolina, he would have been pleased to note the visible signs of educational progress. I doubt that he would have felt very much at home until the recitation period began. Then he could have found his way to a familiar subject-matter class, and he would have found it little different from the classes of his youth. He would have been conscious that there were innovations in the program going on about him, but he might have come to an understanding of the truth that the generations are held together by the subtle magic of things in common, known and felt. Probably he would have felt grateful to the school for this orientation with the past. He might have reasoned with good judgment that the preservation of this heritage is one of the main functions of the public school. Then, as he arose to go at the end of the day, remembering the frightening quality of the world into which he had just emerged, he might have come out of his reverie with some very important questions to ask his teacher. Would this teacher have had a reasonable number of correct answers? Could she have given him some direction in this modern world? This introduces my subject, *The Place of Subject-Matter Specialization in the Curricula of the Public Schools*.

There has been too little understanding of the changes indicated for our public schools by the advent of mass education. All of us know that tradition lays a heavy hand upon our public-school system and that the shadow of the Latin grammar school is still upon us. Nevertheless, the impact of all the children of all the people is a terrific force, and it is not against an altogether immovable object. The trend is already established, and there is little doubt that it will proceed with accelerated pace; the direction is towards a more general education. Traditional subject matter is at the core of the secondary curriculum and will remain there for a long time to come. Anyway, we are not implying that there is any real substitute for subject matter, but there is a wide field for research and investigation as to just what subject matter is most adaptable for the purposes we have in mind, and an even greater responsibility to see that the teacher understands that subject matter is not an end in itself. I think that the Commission on Teacher Education has made an admirable statement which deserves our attention at this time: "Teachers should receive the best possible general education, not only that they may share in what ought to be the birthright of all young Americans today, but also because to them is entrusted con-

siderable responsibility for the general education of all young Americans of tomorrow."

A great many critics of the public-school system, not all of them unfriendly, see in the tendency towards an expanding general curriculum a danger of requirements becoming soft and of students losing this disciplinary value of success in a hard task. This is not a criticism lightly to be set aside. On the other hand, it must be recognized that the fact that a subject happens to be adapted to a student's interests and needs, as well as to his abilities, is no reason to infer that it will lack value in character training. On the contrary, quite the reverse is true. There needs to be a more general understanding of the diverse and multitudinous differences in ability among students in any given public school and at every age and grade level. The I.Q.'s in many high-school graduating classes run the gamut from below 50 to above 150. This is the one perfectly obvious fact to public school people of which many critics of the public schools seem singularly oblivious. It has tremendous implications for the program of teacher training.

It may seem thus far that I am defending a position which puts small value upon subject-matter specialization in the curricula of the public schools. This is not the impression that I intend to leave. A recent study made by the North Carolina Department of Public Instruction concerning subjects taken by the boys and girls in the secondary schools of the state documents what every person connected with public-school administration already knows—that English, mathematics, foreign languages, one of the natural sciences, social sciences, including history, lead the field among the courses taken. Almost every student in the public schools takes these subjects and in most cases for more than one year. A diverse number of other subjects are offered, the number in each school depending on many factors such as size of school and degree of local financial aid. Traditional courses in home economics and agriculture are found in many schools, large and small. The point I am coming around to is this: in spite of much publicity given innovations in the public-school program, they came largely within the framework of the old order. The need for adaptability is ever present. The trend of the present-day school is definitely toward a practical approach to the needs of the individual student. The rate of progress and the direction are determined by finances, the wisdom and vision of the administrator, and the quality and preparation of the teaching staff.



Let us assume that a high school with an enrollment of about 350 to 400 undertakes to set up a program which will meet the ordinary needs of its students. This will mean that in addition to the regular courses which we have enumerated, there must be a large number of special courses. There will be several courses offered in each subject-matter field. For example, a good science program will include at least general science, biology, chemistry, and physics. The English department will include courses in dramatics, speech, and possibly creative writing. The social science department will include, in addition to United States and world history, civics, sociology, psychology, and possibly a course in home and family living. There would be, in addition, guidance services and a host of so-called extracurricular activities to be sponsored by members of the teaching staff. Now the practical fact is that each teacher in this school is likely to teach in two subject-matter fields, or the equivalent, and to have, in addition, certain sponsorship duties which involve a third.

Now that the work has been cut out, it is time to make an appraisal of the qualifications needed by a teacher in this school. A first requirement of the good teacher is mastery of the fields to be taught. We have already noted that this may mean two fields. In addition to this specialization are required a sensitivity to social need, knowledge of good educational methods, skill in teaching, and a good functional general education which has given the teacher contact with all the major fields of human activity and a broad and sympathetic understanding of human nature. This, I wish to emphasize, also has implications for a program of teacher training.

It is now time to look at some of the roadblocks that stand in the way of the training of teachers who over and above their specialization will need these other attributes so necessary to successful teaching in the public schools. It is, of course, understood that no amount of training or change in the curriculum will make good teachers out of poorly selected persons. A good product must come to the teacher-training institution before there can be any hope that an excellent teaching prospect will emerge. As a matter of fact, the importance of attracting young men of character and ability into the profession is far more important than subsequent training, however successful that may be. In pointing out several of the roadblocks it will be recognized that some of the elements of one will appear in another. It is also to be understood that the

criticisms are not meant to be harsh and that many of the conclusions may be dead wrong.

**ROADBLOCK NUMBER ONE:** *Unrealistic practices and standards in regard to professional training and certification requirements.*

There has been a considerable amount of criticism concerning professional requirements for teachers by those who for one reason or another look askance at departments and schools of education. There is a feeling on the part of some that very little technical training is necessary and that courses in education stand in the way of the acquirement of a general education and further desirable specialization in subject-matter fields. Examined dispassionately this criticism seems to be fairly heavily weighted with prejudice. There is general agreement among school administrators that primary and elementary teachers are better trained than teachers of secondary subjects. Much more professional training is required in these fields. There are other factors present, and no scientific conclusion is possible at the present time. However, the criticism, coming as it does from many sources, especially from teachers themselves, indicates a need for a thorough inventory by teacher-training institutions. Without question there is a lot of threshing of old straw in many education courses. Likewise, there is a great need for contact with actual school situations by those who undertake to give the training. Public education is dynamic or it is dead. Courses in education can be interesting and productive, or they can be dull and useless. In the very nature of the subject, this is much more true of education than of a traditional subject-matter course. It is essential that required professional courses be reduced to a minimum and that they stimulate and challenge as well as instruct. Much attention needs to be given to the program of supervised teaching. It is generally true that departments of education and teachers themselves rate such training very high, but there seems to be much doubt among school administrators as to just how effective most schools are in their supervision of this phase of the prospective teacher's work. It should be most effective.

Critics of certification requirements point out that the course of study for primary and elementary teachers is so closely prescribed that there is little opportunity for these teachers to get a good general education. This criticism is underscored by the fact that capable primary and elementary teachers from other states find it impossible to qualify for certificates in this state without taking an

unprecedented number of extra courses. In fairness it should be pointed out that the same is true for North Carolina teachers seeking employment in other states. When certification requirements are examined closely, it will be found that the requirement of strictly professional courses is not far out of line. In an effort to insure that the primary and elementary teacher have a broad general education there have been an increasing number of requirements in such fields as history, government, geography, art, music, and physical education. Each of these requirements has merit in itself, but taken together they hamper the teacher in making a personal selection of courses. A thorough study of certification requirements is in order and there should be at the same time some definite recommendations arrived at concerning reciprocity among the Southeastern States in the matter of recognizing each other's certificates. Further study needs to be given to the matter of reducing to a minimum the requirements for changing a high-school certificate to a grammar-grade status. No radical proposals are being made here. Much research and investigation needs to be done. Criticism becomes more tempered as the evidence becomes stronger that the need for professional training of teachers is well grounded.

ROADBLOCK NUMBER TWO: *Lack of adaptability of subject-matter courses in colleges and universities to teacher training.*

It has been repeatedly pointed out that specialization for the teacher, especially the secondary-school teacher, has been along subject-matter lines and that it is subject-matter centered. This type of specialization does not take into account trends in the elementary and secondary curriculum. As a matter of fact, these courses are taught as content courses and with little or no relationship to teacher training. A different content and organization may be needed, for instance, in courses in science and mathematics from that required for the training of future scientists and mathematicians, or even for those students who just happen to take science or mathematics. There is an important area for co-operation between departments and schools of education and subject-matter departments. The Co-operative Committee for science teaching of the American Association for the Advancement of Science makes such a recommendation and calls for co-ordinated effort. This need is no less obvious for other subject-matter fields; however, any effort in this direction should be frankly experimental in nature. Survey courses do not ordinarily prove very effective. Something more than that would

have to be worked out. Certainly a high-school teacher of science needs more than a touch-and-go contact with the major fields of chemistry, biology, and physics. As a training course for elementary teachers, who are usually weaker in science than any other field, a survey course might prove very effective. The same would be true for nonscience teachers who need a good general knowledge of the field. It would be an excellent course for an English or social-science major. Experimentation in other subject-matter fields could be fruitful. This seems especially true for the fields of English, mathematics, and the social sciences. I am well aware that there are difficulties, some of which are apparent and others not so obvious.

*ROADBLOCK NUMBER THREE: Traditional standards and practices concerning such matters as electives, required courses, majors and minors leave too little choice to the individual and stand in the way of the acquirement of a general education.*

It is a natural tendency for departments to call for too much specialization. Teachers are inclined to feel that they are hindered rather than helped in their efforts to get what they need. This applies not only to departments of education but to subject-matter departments as well. It extends into the graduate schools. One graduate teacher expressed it mildly when she doubted whether a master's degree in English centered around a thesis on "The Lesser Known Poems of John Donne" made her a much better teacher of English in the secondary school. A more general if less scholarly approach to the study of the Elizabethan period would have been more practical, and to say the least, more enjoyable. In a well-explored field scholarship requires minute investigation. The teaching of English literature for enjoyment is not a well enough explored field in our public schools, and training for it is sadly lacking in our colleges and universities.

Pursuing this general thought a little further, I can recall from my own experience spending a year at Duke University taking courses of general interest which I had failed to get during my undergraduate days. I had enough stubbornness to take the courses I wanted without reference to an advanced degree. I can recall a quotation from *Faust* which was a favorite of Dr. Wannamaker, who taught one of the courses I took that year, "Renounce, Renounce, this is the everlasting cry in every ear, that ceaseless rings." It seemed to me then that crossing departmental lines was regarded as one of the unpardonable sins. Later I found it no different at



Columbia University and still later at the University of North Carolina—the heavy artillery was guarding the border between blood relations, sociology and education. Doubtless all this has changed and a spirit of reciprocity no doubt prevails, at least on this campus.

Now as I come to the conclusion of this paper, it may appear that I have hardly touched my subject at all. It may well appear that I have avoided it. In case there are those who feel that this is true, let me repeat again that a first requirement of a good teacher is mastery of the fields to be taught; however, a teacher in the public schools who stops with that can never be a good teacher. We must depend on teacher-training institutions to encourage and foster that broader understanding and to make possible the acquirement of that general education so necessary to the teaching of today's youth. We must specialize in understanding or our whole program of education will come to nothing. It was a great day in 1852 when Normal College was established. It was the beginning of an awakening of our people to the fact that the teacher occupied a unique place in our society and that special training is required for those who would choose this high calling. We are far from satisfied with the progress made in the past one hundred years in the field of teacher training. In this state a number of colleges have been established for the specific purpose of providing an opportunity for young men and women to become capable teachers. There is evidence that some have become ashamed of their appointed destiny. There seems to be a certain stigma attached to the association of a college with the teacher-training process. It may be a hangover from the very general conceit in this country that there is something shameful about being poor. Some teachers still find it difficult to hold their heads high. It may be that as we grow older we shall grow wiser, but as Mr. Walter Lippmann points out, "It is by no means certain that we shall do so."

It is significant that Duke University should today be looking back at little Normal College and paying a tribute on this one hundredth anniversary. It gives hope that a sleeping giant may be awakening. It leads those of her sons and daughters who have chosen public education as a way of life to wonder if at last Mr. Duke's dream concerning the destiny of this great university in the field of teacher training might yet be realized, even as it is being realized in law, medicine, and religion. There could be no more significant day for education in North Carolina.

## HOW CAN INTEGRATION IN THE WORK OF COLLEGE DEPARTMENTS BE EFFECTED TO PREVENT TOO NARROW SPECIALIZATION IN THE EDUCATION OF TEACHERS?

(A summary of the two preceding addresses and the discussion upon them)

FRANCES LACEY

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THE first speaker in this group, Dr. Paul J. Kramer, narrowed the question to the field of science and gave an example of how the topic could be applied to one subject. How to improve the training of students who plan to teach science in our high schools was discussed.

In stating the problem Dr. Kramer pointed out the fact that teaching assignments are determined more often by the size of the enrollment than by the past training of the teachers. Some find themselves in situations where they are expected to teach science courses for which they have little or no training. A broader program of science training is needed. In the second place the colleges must take into consideration the objectives as well as the content of high-school science courses. Learning long lists of isolated facts is not the objective. Students should learn fundamental principles and how to apply them to everyday life. In addition they should become familiar with the methodology of science—how the scientists work and especially what constitutes acceptable scientific evidence.

If these objectives are to be attained we must have teachers with sound understanding of fundamentals and sufficient self-confidence to enable them to depart from the textbook when it seems desirable. The teacher can then adapt his material to his students and to the locality. He can improvise and can take advantage of learning situations as they arise.

Dr. Kramer claims no easy solution to this problem, but he does feel that there will be material improvement in the program of the training of high-school science teachers when there is closer co-operation between the science department, the education department, and the high schools.

Since so many teachers are expected to teach two or three courses including biology and general science, it is suggested that they have

training in four fields—botany, chemistry, physics, and zoology. Probably they should have two or three additional courses in one science in order to understand better the content and methods of at least one science.

To supplement the introductory courses now offered Dr. Kramer recommends that one-semester courses be developed. Such courses are not expected to cover all material given in the usual year course but should concentrate on a few basic principles and illustrations of their use. The one-semester courses would preferably be open only to upper-class students who have had the usual introductory courses in one or two sciences. If such courses could be developed, students, especially those who decide late in their college career to teach science, would go into the field with broader training and more self-confidence for the work assigned to them.

Mr. Gibson, in his discussion of "The Place of Subject Matter Specialization in the Curricula of the Public Schools," pointed out two trends in education today. One is the trend toward general education and the other toward a practical approach to the needs of the individual student. Both trends are based on the general understanding of the multitudinous differences in ability among students in any given public school at every age and grade level.

Although there is a shift in emphasis, Mr. Gibson does not minimize the importance of subject matter. In fact he lists as a first requirement of a good teacher a mastery of the subject he is to teach. In addition to this specialization is required a sensitivity to social need, knowledge of good educational methods, skill in teaching, and a good functional general education which has given the teacher a broad and sympathetic understanding of human nature.

Three roadblocks that stand in the way of the training of such teachers were described and discussed: The first is unrealistic practices and standards in regard to professional training and certification requirements. Interpretation as well as evaluation of these is needed. Lack of adaptability of subject matter courses in colleges and universities to teacher training is the second roadblock. The third is concerned with the fact that too little choice of courses is left to individuals. Because of traditional standards, required courses and rules in regard to electives some teachers find it difficult to get those courses which lead to a general education.

The discussion period centered around problems in the fields of science and literature.

General science came under fire. Such questions as these were asked: Are we in the general-science courses spreading the material too thin? In requiring high-school teachers to teach such courses are we asking the impossible? Would it be advisable to substitute for general science a course that deals with the role of science in the whole sweep of human history? Shall we give specific courses to certain groups of students—to those who will not enter college? to those with limited mental ability? to the student with special interest and talents in science?

In discussing literature the question was asked: Can you teach the enjoyment of literature? The last question which groups of people stood around after the close of the session to discuss further was, Why is it that so many boys and girls as they go through our schools lose that love for literature that all young children have?

The group did not answer these questions, nor did we agree on a complete answer to the main topic assigned to Panel IV. However, we did leave with the problems more clearly defined, with many stimulating suggestions and ideas, and with the determination to renew our efforts to improve the training of teachers in North Carolina.



# THE UNIVERSITY'S DUTY TO THE PUBLIC SCHOOLS

D. HIDDEN RAMSEY

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**N**ORTH CAROLINA is now in the latter stages of a truly inspiring school building program. The local administrative units have already added more than \$80,000,000 to the \$50,000,000 in school building aid provided by the state, and the end is not yet. No friend of the public school can travel throughout North Carolina without being deeply impressed and even uplifted by the new school buildings which he finds in every section, rural and urban. These structures are beautiful in their lines; but more significant still, they are functionally adequate. They were designed to serve the child with their provisions, not to awe the passerby with their imposing exteriors. They reflect the best of modern thought and practice in school architecture and construction. They will render easier and more satisfying the exertions of the teacher and happier and more fruitful the application of the pupil.

However efficient these school buildings may be in their layouts and facilities, they will avail nothing unless their classrooms are presided over by properly trained and dedicated teachers. School buildings are at most only the physical tools with which good teachers can do a good job. The teacher is the heart and the center, the Alpha and the Omega of education. That has always been true and always will be true world without end. The primary task of all of us who have any responsibility for our schools is to insure at all times and under all conditions an adequate supply of well-trained teachers.

The only institutions in our society that can produce teachers are, of course, our colleges and universities. They can provide that professional training which is essential to the development of the teacher. When we think and talk, therefore, of our need for more teachers and for better trained teachers, we think of our colleges and universities as the only sources from which this larger supply of better teachers is to come. They—and they alone—can turn out the teachers whom our school system requires.

The task of the colleges and universities is admittedly difficult. Teaching is the largest of all the professions. There were last ses-

sion approximately one million public-school teachers in active service in the United States. There are more teachers than attorneys and physicians and dentists and architects taken together. Replacements each year must be large to take care of those teachers who die or retire because of age or marriage or who accept other and more lucrative employment. Increased enrollments and the wise insistence of parents upon less crowded classrooms are creating the need for additional teachers.

Perhaps we can better appreciate the magnitude of the job confronting our North Carolina colleges and universities if we bring our figures closer home. During the past session the public schools of North Carolina had in their service 28,300 state-allotted principals, supervisors, and teachers. These figures take no account whatsoever of vocational teachers and those teachers that are provided by local supplements. During the coming session 1800 additional teachers will be required to take care of the increased enrollment and to fill the additional positions created by the reduction in the pupil load recently authorized by the State Board of Education.

Our teacher problem in North Carolina is both quantitative and qualitative. We need more teachers to fill the additional teaching positions. We need better trained teachers to replace those teachers who do not hold G or A certificates.

During the past seven years significant progress has been made in attracting adequately trained teachers into our state school system. In this period the state has added 3,750 new teaching positions. In the same interval, the number of teachers holding A or G certificates has increased by 4,337. Stated differently, the state has filled the 3,570 new positions with properly trained teachers while reducing by 767 the number of teachers holding less than A certificates. It is this progress which encouraged the State Board of Education to reduce the teacher load. We believe that good teachers can be secured to fill most of the new positions which we have created on such short notice.

Our most urgent need is for more white elementary teachers. Our Negro colleges and universities are turning out more teachers, both elementary and high school, than are required to fill the openings that develop each year. Our output of white high-school teachers is, generally speaking, entirely adequate. But the shortage of white elementary teachers is grave and seems to acquire added gravity with each school year. In 1951 the private and public white colleges of North Carolina turned out 2,076 young men and women

trained for the teaching profession. More than 1600 of these graduates—or 80 per cent—had qualified themselves as secondary school teachers. Actually, only about 25 per cent of our teaching positions in North Carolina are in the secondary field. Why four out of every five of our expectant teachers are training themselves for one out of every four of our available teaching posts is a mystery which I cannot fathom. It is certainly not explainable by economic factors. In North Carolina there is no differential whatsoever in the salaries of the elementary and secondary school teachers. Assuredly, the preference for high-school positions is not due to any conviction that the secondary school teacher is engaged in more important professional tasks. The most useful teacher is, I think, the elementary teacher, particularly the one in the lowest grades. A child can recover from the ill effects of poor instruction in the high school, but there is little hope of educational redemption for the child who is cursed with a poor teacher in the first, second, or third grade. The damage done in those formative years is everlasting.

More college students training for teaching careers must be persuaded to elect elementary teaching. If this is to be done, it must be done largely in the colleges and by the faculties of the colleges. It is virtually too late after the student has completed his training and applies for a vacancy that does not exist. If there is any one responsibility which rests almost exclusively upon the colleges and universities, it is the duty—and the opportunity—of directing more expectant teachers into elementary school work. This appalling imbalance in the output of elementary and secondary teachers must be corrected. It can be corrected only in the colleges and largely by the colleges.

Another pressing need in our public schools is for more men teachers. In the nation one public-school teacher out of every five is a man, while in our state only one teacher out of every eight is a male. Whatever the reason for this condition may be, it is not economic. Idaho, with a lower teacher salary schedule than North Carolina, has twice as many male teachers percentage-wise. Even Mississippi, which ordinarily occupies the low position on the educational totem pole, can boast of more men teachers than our own state.

No thoughtful person depreciates the incomparable services being rendered by our women teachers. They bring to the profession that maternal instinct and that unwearying patience which make teaching so productive of good in the lives of young people.

A majority of our teachers will always be women—and that is the way it should be. But if our state school system is to achieve the maximum results in instruction and in discipline, we must increase the number of men teachers. Our colleges and universities can be tremendously helpful in directing gifted young men into the teaching profession.

Many of our teaching inadequacies of today stem from the fact that we have come to look upon the teaching profession as a third-rate calling. Our state appears to begrudge the money that it spends on our teachers colleges and on the departments of education in our Greater University. We cheerfully spend \$3,000 to \$4,000 a year to train a doctor and lay to our souls the flattering unction of supposed generosity when we expend \$300 a year to educate a teacher. We relegate the school of education to the attic or basement while we reserve the choice spaces for the departments that train for the more glamorous and rewarding professions. Teaching is a third-rate profession only in its financial rewards. In its service to society, it is basal and first-rate. It is of course the profession that is precedent to all other professions. Without good teachers in our public schools to prepare young men and women for college work, the other professions would wither and die for lack of recruits. Our colleges have an inescapable responsibility for the restoration of the teaching profession to its proper place in the esteem of society. They need to bring their schools of education down from the attic and out of the basement and to give them their due position in the academic scheme of things.

Really, the minister of Gospel aside, is there any more useful person in society than the truly consecrated and inspiring teacher? Some fortunate persons have a genius for imparting knowledge, for stimulating young minds, for kindling ambitions, for fixing character. Such persons are above price. When a young person shows promise of such talent in college, he should be persuaded or even blackjacked into the teaching profession. Society suffers an irreparable loss when a person with this divine talent does not enter the teaching profession.

The contributions which this university and the other private colleges and universities of North Carolina are making to the available supply of properly trained teachers are very considerable. Roughly speaking, 45 per cent of the white college students of North Carolina are enrolled in private institutions as distinguished from state-supported colleges. In 1951, 47 per cent of the college gradu-



ates trained for the teaching profession came from these private institutions. In proportion to their total enrollments, they are turning out as many teachers as the state-supported institutions with their more immediate and palpable responsibilities to the public-school system. The teacher situation in North Carolina has been serious these past few years. I shudder to think what it would have been if the state had been deprived of the virtually 50 per cent of its new teachers that issued out of the private colleges. The state's obligation to these institutions is truly immeasurable.

The private colleges of the nation must continue to train teachers if the enormous need for additional teachers is to be substantially met in the difficult years ahead. Their withdrawal in any large numbers from the field of teacher training would be calamitous to our public school system. It would operate to diminish the supply of new teachers at a time when the need for new teachers was the sorest.

The private colleges must continue to produce teachers if for no better reason than to protect their lines of supply and to insure to themselves entering students properly grounded in the fundamentals of secondary education. Approximately 90 per cent of the college students of the nation come from the public high schools. Every college and university in the land draws upon the public schools for its raw material and in drawing upon these schools incurs a certain responsibility to them. It can discharge this responsibility completely only by using some of its own facilities to train good teachers for these schools.

"More teachers, better teachers"—these four words define the most critical problem confronting the public schools of the nation. Those public officials who are responsible for preparing budgets and determining appropriations have their own responsibilities for the solution of the problem. The financial rewards of teaching must more nearly approximate the vast services which the good teacher renders to our democratic society. Young men and women entering the teaching profession should not be expected to take the vows of poverty.

But the real solution must come in and through the colleges of the nation. They produce our teachers, many or few, good or bad. If the problem is to be met and mastered, it must be through the combined resources of all of the colleges and universities, great and small, private and public, of the land.

# THE PRIVATE COLLEGES OF NORTH CAROLINA AND THE NEEDS OF THE SCHOOLS FOR TRAINED PERSONNEL

C. D. DOUGLAS

*Controller, State Board of Education*

## I. INTRODUCTION

IT IS a great pleasure to me to have this opportunity to call attention on this occasion to the distinguished service the chairman of the final general session of this conference, Mr. A. S. Brower, is rendering to the public schools of North Carolina as a member of the State Board of Education and as chairman of its Finance Committee. He has a quiet sort of *modus operandi* which gets things done. He studies each problem with great care and spares no effort in his work. There are few persons in North Carolina who have accomplished as much for public education as he. The North Carolina public schools are greatly in his debt.

The subject which has been assigned to me, "The Private Colleges of North Carolina and the Needs of the Schools for Trained Personnel," is one I hope I can discuss with proper balance because of my own experience. I attended a private high school in the days when there was no public high school for me to attend. I also attended a private college, but I have spent all my working years in the field of public education.

I am indebted to Dr. James E. Hillman, Director of the Division of Professional Service, State Department of Public Instruction, and to the *Public School Bulletin* for the published information on college enrollments.

## II. PRIVATE COLLEGES IN NORTH CAROLINA

Before discussing the private colleges, it will be helpful to give a background of the magnitude of the whole program of higher education in North Carolina in order that we may have a proper perspective of the relationship of the public and private colleges in the State.

*Number of Colleges.* During the year 1951-52, 59 colleges were operated in North Carolina by both state and private agencies, which included 45 white colleges, 1 Indian college, and 13 Negro colleges. Of the 59 colleges operated, 34 were senior colleges and 25 were junior colleges. Twenty-two of the senior colleges are white.

<i>Number of Colleges</i>			
	<i>Senior</i>	<i>Junior</i>	<i>Total</i>
White .....	22	23	45
Indian .....	1	—	1
Negro .....	11	2	13
Total .....	34	25	59

*College Enrollment.* The enrollment in these 59 colleges in 1951-52 totaled 40,725, comprised of 32,182 white students, 123 Indians, and 8,420 Negro students.

<i>College Enrollment</i>			
	<i>Senior</i>	<i>Junior</i>	<i>Total</i>
White .....	27,868	4,314	32,182
Indian .....	123	—	123
Negro .....	8,251	169	8,420
Total ..	36,242	4,483	40,725

*Senior White Colleges.* All the senior white colleges in North Carolina, except two, train school personnel, and the total enrollment in these 20 senior colleges was 27,677 in 1951-52. Of this number, 15,329 were enrolled in the 6 State institutions and 12,348 were enrolled in the 14 private colleges—percentage-wise approximately 55 per cent were in state colleges and 45 per cent in private colleges.

It has been estimated that in 1951-52 a total of 1961 new teachers would come from these 20 white senior colleges. The percentage relationship between state and private colleges in the training of teachers has been about 53 per cent state and 47 per cent private, but in 1951-52 the state figures increased to 63 per cent and the private college figures dropped to 37 per cent.

<i>White Senior Colleges</i>			
	<i>State</i>	<i>Private</i>	<i>Total</i>
Number of colleges, 1951-52 .....	6	14	20
Enrollment, 1951-52 .....	15,329	12,348	27,677
Enrollment percentages .....	55%	45%	100%
Bachelor degree students qualifying for "A" Certificates:			
1950-51: Number .....	1,098	978	2,076
Per Cent .....	53%	47%	100%
1951-52: Number .....	1,227	734	1,961
Per Cent .....	63%	37%	100%
Estimated number 1951 graduates teaching in North Carolina public schools in 1951-52:			
Number .....	643	565	1,208
Per Cent .....	53%	47%	100%

Though the public and private white colleges of North Carolina in 1951 graduated 2,076 prospective teachers, only 1,208 of these worked in the North Carolina public schools in 1951-52. The reason for this situation must be determined. It seems to be a general law of human nature that most people work in the general geographic area of their birth. It is my belief that one of the best means to get more people from North Carolina colleges to enter teaching in the public schools is to get more young people living in North Carolina to enter North Carolina colleges.

### III. PUBLIC-SCHOOL PERSONNEL NEEDS

In order that we may see the needs for trained personnel in the public schools it will be necessary to review the figures on present employment in the public schools and the figures on the number of new persons who come into the North Carolina public schools annually.

*Public-School Employment, 1951-52.* During 1951-52 there were employed in all North Carolina public schools (all races, state and local) 30,821 teachers, principals, supervisors, and superintendents. But since we are studying personnel in relation to the job of the white senior colleges the figure we need to keep in mind is the number of such positions in the white schools—that is, 22,345.

#### *Public-School Employment, 1951-52*

	<i>White</i>	<i>Negro</i>	<i>Total</i>
Teachers .....	20,864	8,033	28,897
Classified Principals .....	1,125	359	1,484
Total .....	<u>21,989</u>	<u>8,382</u>	<u>30,381</u>
Supervisors .....	184	84	268
Superintendents .....	172	—	172
Total .....	<u>22,345</u>	<u>8,476</u>	<u>30,821</u>

*New Persons, 1951-52.* The actual number of new persons who came into the public schools in 1951-52 is not available. However, the number who taught last year for the first time is an indication of the needs for new personnel. In addition to these, a sizable number of experienced persons came from other states as new teachers in North Carolina. During the school year 1951-52, for all schools, 1,961 new persons without experience in the classifications previously mentioned were employed. The need for trained white elementary teachers should be given close attention, because the need is about three elementary teachers to one high-school teacher. The number trained is in the reverse order.



The number of new persons who worked in the white school in 1951-52 was about 1,500, exclusive of experienced teachers coming from other states. In other words, the personnel without experience is over 7 per cent of those employed in the white schools

*New Persons, 1951-52*

	<i>White</i>	<i>Negro</i>	<i>Total</i>
Teachers (A-O and B-O) .....	1,449	409	1,858
Classified Principals (P-O) .....	65	18	83
Supervisors (Est.) .....	8	4	12
Superintendents (Est.) .....	8	—	8
Total .....	<u>1,530</u>	<u>431</u>	<u>1,961</u>

*Dependence on Private Colleges.* Against the background which has been given as to number of students enrolled and the number of prospective teachers who come from the private colleges, it is quite clear that the public-school system of North Carolina is dependent to a large degree upon the private institutions for trained personnel.

If tomorrow your paper should carry the headline NO NORTH CAROLINA PRIVATE COLLEGES WILL BE OPENED IN SEPTEMBER, we would then realize the large part the private institutions have played and are playing in the whole program of higher education in North Carolina.

In the tragic story beneath such a headline would be woven the thread of calamity which would come to the public schools because 45 per cent of the North Carolina source from which new school personnel is obtained would be gone and it would take years for the adjustment to be made to the new conditions.

#### IV. DUKE UNIVERSITY AND THE PUBLIC SCHOOLS

So much for the private colleges as a whole.

Duke University and its antecedents have considered that it was their duty to serve in all public causes as they arose. I think this Centennial Celebration of Teacher Education is an expression of the rededication of Duke University, not only to college teaching, but also to the service of the public schools of North Carolina. Dr. William Preston Few, the first president of Duke University and the last president of Trinity College, in his inaugural address in November, 1910, had the public schools greatly upon his heart when he said:

Of all the confusions and tragedies that followed the Civil War in the South, perhaps the most pathetic have been the chaotic edu-

educational conditions of the last half century. There has been progress in the direction of a rational system of education, but we are not yet out of the wilderness. In all educational reform the college should furnish its full share of leadership. . . . Trinity College will always throw itself unreservedly into the doing of the supreme duty of the hour. A while ago it was at any cost to break the shackles of politics and traditionalism. Today it is to put within reach of every child the opportunities of the elementary school, the grammar school, and the high school . . . and in this great task every bit of the strength the State can command from all sources for the next ten years should be concentrated. To consolidate all the forces in the State for this purpose and to realize them so that the largest and most beneficent results may follow is a proposal that should command the heart and hope of all enlightened men and women.

Dr. Few in his address stated that "It is not, however, among the direct aims of the college to educate publicists or ministers or skilled workmen or teachers, but to send out graduates who have been trained for efficiency and who are equipped with trustworthy character." This statement was not as restricted as it might seem. During his administration as president of Trinity College one of the most effective college departments of education in the state was developed at Trinity College under the direction of Dr. Eugene Clyde Brooks through college instruction, in the editorship of *North Carolina Education*, by public addresses, and in writing on educational subjects.

Duke University has a unique position among the private white senior educational institutions of higher learning in North Carolina in that it has the largest enrollment in the group. It has about 37 per cent of the enrollment in this group, which is indicative of the responsibility it may have in the training of public-school personnel. This forward step in exploring the field of teacher education and the increased training of school personnel for the North Carolina public schools appears to be in accord with our needs and with the Indenture which Mr. James B. Duke made. A person who has the precious element of gratitude in his make-up as he grows older always turns his thoughts to the region in which he had his origins. Mr. Duke is no exception to this. As evidence of his thinking I wish to quote from his Indenture. As to the geographic area to receive the benefits of his gift, he said:

For many years I have engaged in the development of water power in certain sections of North Carolina and South Carolina. . . . My ambition is that the revenue of such developments shall administer to the social welfare . . . of the communities which they serve.

It is interesting to note that the geographic area of all the causes listed as beneficiaries of his Indenture—education, hospitals, orphanages, superannuated Methodist preachers, rural Methodist church buildings, and the operation and maintenance of rural Methodist churches—for all these, the area was limited to North Carolina and South Carolina. This does not mean that Mr. Duke was provincial. It merely means that he saw the greater needs of his people.

Not only was Mr. Duke concerned with the general education and other benefits to the people of this particular area, but he was interested in special fields of education as illustrated by the language used when he set up funds for buildings at Duke University "to the end that said Duke University may eventually include Trinity College as its undergraduate department for men, a School of Religious Training, a School for Training Teachers, a School of Chemistry, a Law School, a Co-ordinate College for Women, a School of Business Administration, a Graduate School of Arts and Sciences, a Medical School and an Engineering School, as and when funds are available."

Referring to the courses at Duke University, the Indenture continues:

And I advise that the courses at this institution be arranged, first, with special reference to the training of preachers, teachers, lawyers, and physicians, because these are most in the public eye, and by precept and example can do most to uplift mankind, and, second, to instruction in chemistry, economics and history, especially the lives of the great of earth, because I believe that such subjects will most help to develop our resources, increase our wisdom and promote human happiness.

#### V. CONCLUSION

In these remarks I have undertaken to indicate something of the large part the North Carolina private colleges have in the training of personnel for the public schools of North Carolina and the dependence of the public schools on these colleges.

The rededication which Duke University has made to the cause of public schools as evidenced by this Centennial Program on Teacher Education is, I believe, in accord with the historical development of this University's antecedents and of the founder of this University.

The private colleges of North Carolina can make one of their greatest contributions to North Carolina by sending into the North Carolina public schools, in sufficient numbers, real teachers to instruct the children of the people and by training qualified and inspiring administrators to direct the people's schools.

# DUKE UNIVERSITY AND TEACHER TRAINING

PAUL GROSS

*Vice-President in the Division of Education and  
Dean of the University, Duke University*

THOSE in charge of the planning for this occasion have asked me to speak on the topic "Duke University and Teacher Training." In doing so, I should like to broaden the scope of my remarks to include some general aspects of the role of universities in the preparation of teachers and to set this presentation against the background of both the world situation and some of our regional problems as I see these today.

Before dealing with those more general aspects, it is well to consider Duke University's role in the immediate situation that confronts us with respect to the training of teachers. There are certain practical considerations which have to be taken into account before we can do much to improve the operation itself. The first of these is the need for a better knowledge of the teachers' problems on the part of university and college faculties, and of the performance of our teacher graduates in the public school systems after we have trained them.

We have dealt with this need by assigning one of our senior professors of education on a part-time basis to establish contacts with our teacher graduates who are in the field, discuss their problems with them, and digest his findings and report them to our faculty. The results of such study, if followed up consistently and carefully appraised, will provide a wide variety of information directly applicable to our own teaching and training procedures for the future teachers who come under our guidance.

The keynote of our present endeavors is to realize the need for co-operation between the University and the schools at the working level and to act upon it. An example of this point of view was the establishment in the Summer School of 1951 of the Science Teachers Laboratory Workshop. In this enterprise members of our own science faculty work side by side in laboratories and conferences with the high-school teachers. The objective is to help these teachers solve the numerous and difficult problems with which they are confronted in connection with the science program of the high schools.



Our Mathematics Institute has had a similar orientation in relation to the problems of teaching mathematics at the high-school level.

A matter of vital importance both to the colleges and universities in connection with their planning for the training of teachers, and obviously of utmost importance to the teachers themselves, is the nature of the certification requirements for teachers. This applies both to the detailed requirements involved for certification and more particularly to the philosophy underlying the development of these requirements and the manner in which they are applied. There is general feeling that both the requirements and the philosophy need revision if the best interests of the teachers and the public schools are to be adequately served. Here of all places a co-operative endeavor at the working level will be needed, involving able, experienced teachers; school superintendents and principals; and the faculties of the colleges and universities who prepare the teachers.

There is need for a still different type of co-operation at the working level of the teacher in the field to which I want to draw attention. This concerns the especial role of the school community in the recruitment of able young men and women for the profession. With the salary levels paid to public and high-school teachers today, in comparison with other professions, it is indeed true that we have to rely heavily on what Mr. Ramsey called last night the "dedicated individual" who is willing to sacrifice more attractive financial opportunities in other callings to become a teacher. The average school community has a far more significant part to play in this connection than it has yet realized. Not only can it make general social and economic factors better for its local school system, but it can encourage promising individuals to enter on a teaching career through the provision of scholarships and other types of assistance.

Here also the university and college could play an equally important part. Through the award of a number of modest scholarships for summer studies, it can single out the able and meritorious teachers and assist them. Through its alumni, publicity department, and other channels it can give publicity to these awards in the local community. When local newspaper publicity and community acclaim on the occasion of such an award reach only a fraction of that accorded a successful high-school football coach here in the South, one of the much needed steps in raising the prestige and stature of the public-school teacher in the community will have been taken. As its contribution toward such a program Duke University is offer-

ing twenty such scholarships to teachers for use in its 1952 summer school and hopes to increase this number in future years.

These are some examples of the manner in which Duke University as an institution is thinking, at the time of this one-hundred-year anniversary celebration, of how better to approach the matter of the preparation of teachers. One important aspect of this approach needs to be emphasized. From the widespread interest in the faculties of all departments and the administrative group, it is clear that we are no longer regarding the job of training teachers, as it has been the fashion to do in the past quarter of a century, as the sole responsibility of the Department of Education. This widespread interest is leading us to a well-integrated effort which involves much of the university structure. In spite of the hope that this enthusiastic support engenders, we must not ignore the magnitude of the problem with which we are dealing. There are several aspects of the problem which it is worth while to point out:

Increasingly today, the complex institutions which we call universities have assumed responsibility for training the wide variety of specialists of all sorts that are needed in our modern world. This responsibility the university cannot neglect, as I believe can be demonstrated in the light of our present world situation. Those responsible for our national policy have turned for national defense in the direction of a highly skilled, relatively small army equipped with the most modern weapons that can be devised, in abundant supply. Such an approach to the general problem of the national defense and survival implies a number of things. Prominent among these is the fact that our basic economy, though little disturbed in direction, is greatly expanded in scope and volume. As a consequence we shall need increasingly larger numbers of highly trained specialists in a wide variety of professions. These will range from large numbers in the relatively well-known disciplines, such as mathematics, chemistry, physics, biology, medicine, economics, and various branches of social science, to smaller, but equally important, numbers of well-trained individuals in such less-known fields as meteorology, oceanography, and various phases of the earth sciences, to mention just a few examples. If we are to follow this road in building up our national and world defenses, it will be the universities that will have to recruit, train, and supply specialists.

Today the competition between such special disciplines for the best brains to be found in our student body is indeed keen. Funds for scholarship support are easily available to the able student who

wants to continue his training in medicine or one of the sciences, and these callings are, furthermore, very much in the public eye and high in prestige. Not only is support available for continued training in many such specialties, but also the financial rewards of the trained workers in these are better than in the teaching profession. The two things, therefore, that are needed, and badly needed, in this connection, are, first, to provide during their training period those who aspire to a teaching career with support which is reasonably commensurate with that in other fields, such as the sciences and medicine. The second matter we all know about, but unfortunately do all too little to correct. This is the need for a concerted effort to bring teaching salaries in our public-school systems to a reasonably adequate level. We are expecting too much to rely on the zeal of those rare individuals who are "dedicated" to teaching as a career.

We have discussed one aspect of the broad problem of teacher preparation which is concerned primarily with recruitment. Let me now turn to a different phase of the problem, namely, what the teacher must be prepared to teach in our modern world and more particularly in our Southern region. We must all realize, as teachers in the public-school system well know, that the high-school diploma represents a terminal educational degree for much of our school population. This places a tremendous responsibility on the high schools, as well as on the colleges and universities that train their teachers. Here in the South this responsibility is particularly heavy in view of the rapidly changing economic base of this region. Increasingly technical, educational, scientific training and preparation in economics and related social-science subjects will be needed as the new South continues to develop. On every hand we have examples of the location of new plants, both large and small, in or close to semirural communities throughout this section. Many of these industries have established and are establishing in-service training courses to improve particular special skills, usually of a technical sort, among their employee groups. This training, if properly done, will equip the working population of the South better for the jobs on which it will be increasingly employed. At the same time, however, it is too much to expect or ask that such courses, if paid for and sponsored by industry, will have a broad perspective, or more than a limited value in the all-around educational training of an individual citizen.

To my mind, this means three things. We must scrutinize carefully the cultural content of a high-school curriculum, at the same

time that we are improving it from the standpoint of the preparation which it can give in the natural sciences, social sciences, and technical subjects. In the second place, this state and others in the South must actively develop and push forward sound programs of vocational education which will have as their principal objective not only the development of special skills, but the development of confidence and independence in the individual. It will become necessary, as the South is more and more industrialized, to build up the individual's initiative and ability to think for himself. Without this we are in danger of becoming a one-sided society trained narrowly in technical specialties. The third direction in which I think it is necessary for us to move is toward the development of a system of adult education. The opportunity and need for this, with the shorter work hours now prevailing in industry, is real indeed; and its presence or absence will have a marked effect on the whole future social development of this region of the country.

In conclusion, I may summarize the role which it appears to many of us here at the University that Duke should play in improving the preparation of teachers. We propose to learn more about the problems of the public-school teachers, at the working level and the situation in which they have to operate, and to do what we can to assist with them. Secondly, we hope to obtain funds and support for scholarships for promising young men and young women who wish to enter a teaching career, so that recruitment for this career will not be at a disadvantage with respect to opportunities offered in other fields of specialization in the University. Third, we hope to study, with the help of our faculty and other resources, the problem of the best type of curriculum for teacher training which it seems possible to project in the light of the world situation today and the problems arising out of the rapid industrialization of the Southern region. If Duke University is able to make progress in one or all of these directions, it will fulfil the role that it traditionally has had in Southern higher education, namely, that of pointing the need and showing the way where new leadership and new endeavor are most urgently needed on the Southern educational scene. I feel that I can speak for the faculty and the University as a whole when I say that we will bend our best efforts to the achievement of these ends.





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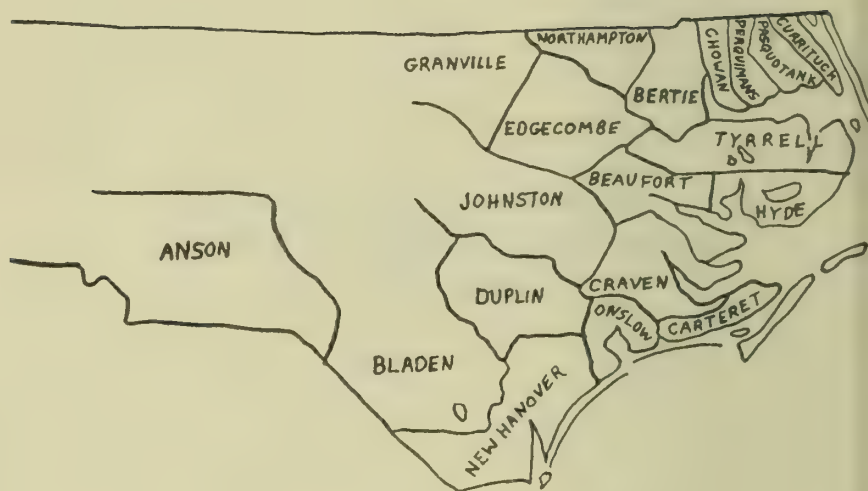
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HISTORICAL PAPERS OF THE  
TRINITY COLLEGE HISTORICAL SOCIETY  
SERIES XXXI



NORTH CAROLINA  
1750

Showing Approximate County Divisions  
within Present State Boundaries

Based upon maps by  
L. Polk Denmark  
in

D. L. Corbitt's *The Formation of the  
North Carolina Counties, 1663-1943*

PAUL M. McCAIN

The County Court in  
North Carolina  
before 1750

DUKE UNIVERSITY PRESS  
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## Preface

For almost two hundred years before the adoption of the state constitution of 1868 the county court was the principal institution of local government in North Carolina. The Proprietors laid the groundwork for the court in the Fundamental Constitutions of 1669, which provided for the establishment of a court in each precinct of the colony. Courts were soon in operation in the precincts of Albemarle, the only county then in existence, and later in those of Bath County, which was created in 1696. After Albemarle and Bath counties were abolished in 1738/39, the precincts became "counties," and the precinct court was known as the "county court." By the middle of the eighteenth century this county court had become the chief administrative body of the county as well as its court of justice.

This study traces the development of the county court from its inception under the Proprietors as a precinct court down to 1750, when its organization and powers had become relatively fixed and stable. The emphasis is upon the operation of the court; specific cases and incidents are here used only for purposes of illustration. Because not many of the laws enacted prior to 1715 and only a few of the court minutes dating before 1730 have been preserved, the operations of the county courts are analyzed in greatest detail for the years 1730 to 1750.

This study can be viewed from three standpoints. It is a segment of the early history of North Carolina. It is also an account of local government at a particular place in early America, including some data in the neglected field of American legal history.

Thirdly, it describes one phase of the movement of political power, in this instance a decentralization, which was induced by the rapid expansion of the settled area of colonial North Carolina. The provincial officials who initially constituted their own government in the colony found it expedient to create subdivisions for the province and to delegate to the local officials many of the powers they themselves had exercised.

Almost the entire period covered by this paper lies before the date which has generally been used as the starting point for descriptions of North Carolina county government. When writing on this subject, historians usually begin with the court act of 1746, which was a comprehensive law replacing previous legislation on court procedure. However, the essential features of the organization and jurisdiction of the county court had been established prior to 1746.

This study is based primarily on the material printed in *The Colonial Records of North Carolina*, the laws printed in *The State Records of North Carolina* and those preserved in manuscript in the British Public Record Office, and the county records in the North Carolina Department of Archives and History. The court minutes are the most valuable county records; they are supplemented by such miscellaneous papers as writs, bonds, and petitions. With very few exceptions the North Carolina Department of Archives and History has in its collections all the pertinent extant county records for the period before 1750.

I am gratefully indebted to Dr. Charles S. Sydnor, of Duke University, for his suggestion of this subject and for his encouragement and criticism. Dr. R. H. Woody, of Duke University; Mr. D. L. Corbitt, of the North Carolina Department of Archives and History; Miss Mary L. Rudolph, of Brenau College; and Mr. W. W. Abbot rendered valuable assistance in their discussion of the subject and in reading the manuscript. Finally, I wish to thank my wife, Eleanor Brown McCain, for her patience, inspiration, and assistance during the writing of this book.

P. M. M.

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THE COUNTY COURT IN  
NORTH CAROLINA  
BEFORE 1750



## C H A P T E R I

# Evolution of the Court

When Virginia became a royal province in 1624, Charles I assumed the right to dispose of the unsettled territory within her boundaries. His first large grant consisted of the region southward between the thirty-sixth and thirty-first degrees of latitude and extending westward "soe fare as the Continent extends itselfe." This vast area was given to his attorney-general, Sir Robert Heath, in 1629 and was designated the province of Carolina.<sup>1</sup> However, since Heath planted no settlements in the area, Charles II reallotted the same territory on March 24, 1662/63, to eight of his courtiers: Edward, Earl of Clarendon; George, Duke of Albemarle; William, Lord Craven; John, Lord Berkeley; Anthony, Lord Ashley; Sir George Carteret; Sir William Berkeley; and Sir John Colleton. Two years later, after colonization had begun, the King granted these eight "Lords Proprietors" a second charter extending the boundaries of Carolina thirty minutes of latitude farther northward and two degrees farther southward.

The charter of 1662/63 and that of 1665 both vested in the eight Proprietors an authority over their province equal to that previously held at any time by the Bishop of Durham over the county of Durham in England. The position and power of the Bishop of Durham had arisen centuries earlier when the King adopted a system of palatine jurisdiction as a solution to the problem of maintaining peace in the remote frontier regions of the

<sup>1</sup> William L. Saunders, ed., *The Colonial Records of North Carolina* (Raleigh, 1886-1890), I, 5-7. The ten volumes of this set are followed by sixteen volumes, XI-XXVI, entitled *The State Records of North Carolina* (1895-1907), edited by Walter Clark. The *Colonial Records* are cited hereinafter as C.R.

realm. The government was virtually independent of the Crown, having its own administration, assembly, and courts. Although the Bishop of Durham had lost much of his power since the fifteenth century, the King was willing to endow the Proprietors with the broadest palatine authority.<sup>2</sup>

The charters specifically empowered the Carolina Proprietors, "with the advice, assent and approbation of the freemen of said province, or of the greater part of them, or of their delegates or deputies" in assembly, to enact any laws for the province that would be "consonant to reason, and as near as may be conveniently, agreeable to the laws and customs" of England. To enforce these laws the Proprietors were "to appoint and establish any judges or justices, magistrates or officers whatsoever . . . [as] shall seem most convenient . . . and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong."<sup>3</sup>

Shortly after the Proprietors received the charter of 1662/63, they formulated plans to encourage the settlement of the province. At first they concentrated on two areas: the land lying north of Albemarle Sound and the territory in the vicinity of the Cape Fear River. A few settlers were already occupying parts of the former section, and explorations had been made of the latter. During 1664 the Proprietors organized these areas into Albemarle County and Clarendon County respectively. Although these two governments were designated "counties," they were actually palatine counties. Each had its own governor, assembly, and laws and was independent of the other and of any other government in America; however, they both owed equal allegiance to the Proprietors, who were in England.

While the counties of Clarendon and Albemarle were still in their first year of existence, the Proprietors made several revisions in the organization and administration of their government. They also anticipated establishing a county by the name of Craven at

<sup>2</sup> John S. Bassett discusses the palatine county in England and North Carolina in *The Constitutional Beginnings of North Carolina, 1663-1729*, "Johns Hopkins University Studies in Historical and Political Science," 12th Series, No. III (Baltimore, 1894), pp. 21-29. Also see Gaillard T. Lapsley, *The County Palatine of Durham: A Study in Constitutional History* (New York, 1900).

<sup>3</sup> C. R., I, 23-24, 104-106.

Port Royal or some other point south of Cape Romain. The "Concessions and Agreement" of January, 1664/65, set forth in detail the powers of the governor, council, and assembly and enumerated the rights and privileges of the inhabitants in these three counties. The governor was to choose his councilors, as few as six and not more than twelve. The governor and his council acting together were to appoint the civil and military officials of each county and to see that the laws were properly executed. Until the counties were subdivided, the inhabitants of each might elect twelve representatives to join with their governor and council to make such laws as would be necessary. These assemblies were to levy taxes, establish courts, erect subdivisions within their bounds, and take other measures necessary for the prosperity of the government.<sup>4</sup>

The growth of settlements in Carolina was slow. Clarendon County had only a temporary existence. Misfortunes and difficulties caused the inhabitants to abandon their new homes and move elsewhere. Albemarle fared better. During the first year of its existence an assembly was held.<sup>5</sup> By 1666 the population of Albemarle had increased sufficiently for its representatives to be invited to meet with those from Virginia and Maryland to draw up an agreement concerning a temporary cessation of tobacco planting.<sup>6</sup> In the spring of 1669 the Proprietors decided to establish a settlement at Port Royal and sent out an expedition of three ships. This venture was a success after the settlers decided to move northward to the Ashley River. In 1680 the chief center of the settlement was fixed at the confluence of the Ashley and Cooper rivers at the place named Charles Town.<sup>7</sup>

When the Proprietors were making plans for the Port Royal expedition in 1669, they determined to organize the government in their province so that it would become "most agreeable to the monarchy" under which they themselves lived and would avoid

<sup>4</sup> C. R., I, 79-93.

<sup>5</sup> The brief reference to this "General Assemblie" in the records does not indicate the composition or size of its membership nor the exact date it met (C. R., I, 101).

<sup>6</sup> At this meeting Governor Drummond and Thomas Woodward, the surveyor, represented Albemarle County as "Commissiours by the deputie Genl Court, and Committee of ye said County being ye Legislative power of ye said County" (C. R., I, 141).

<sup>7</sup> A good account of this colonization is in Wesley F. Craven, *The Southern Colonies in the Seventeenth Century, 1607-1689* (Baton Rouge, 1949), pp. 329-353.



"erecting a numerous democracy." In July they agreed upon a draft of the Fundamental Constitutions which were to "remaine as ye sacred unalterable forme and rule of Governmt. of Carolina for ever."<sup>8</sup> Under the Constitutions the will of the nobility was to be dominant, but the rights of the people were to be respected and safeguarded. The provincial government was to be in the hands of officials organized in a system of departments, each department being called a "court." The duties of these courts were principally administrative rather than judicial. The highest court was the Palatine's Court. It was composed of the Proprietors themselves and was presided over by the Palatine, the eldest of the Proprietors. Each of the other Proprietors headed a court controlling one of the functions of government: military, naval, state affairs, treasury, vital statistics, commerce, and justice.<sup>9</sup> A Grand Council formed from the membership of these courts was to propose all matters considered by the Parliament, a body consisting of the nobility and four freeholders from each county.<sup>10</sup>

Under the Fundamental Constitutions the Proprietors planned to retain the county as the largest subdivision of the province of Carolina. Two-fifths of the land in each county was reserved expressly for the Proprietors and the nobility. The remainder was to be divided into four precincts and each precinct subdivided into six "colonies."

In each precinct there was to be a court consisting of a steward and four justices who were to judge all civil actions and all criminal cases not punishable by death, but none of the criminal cases of the nobility. Each precinct court was to have quarterly terms beginning on the first Mondays of January, April, July, and

<sup>8</sup> A copy of the original draft of the Constitutions appears in *Collections of the South Carolina Historical Society*, V (1897), 93-117. Although the draft was penned in John Locke's hand, Lord Ashley's influence on its conception is recognized.

<sup>9</sup> These courts were to be designated respectively: the Constable's Court, the Admiral's Court, the Chancellor's Court, the Treasurer's Court, the Chamberlain's Court, the High Steward's Court, and the Chief Justice's Court.

<sup>10</sup> *C. R.*, I, 187-205. The version of the Fundamental Constitutions included in the *Colonial Records* was approved on March 1, 1669/70, and is actually not the original one which was adopted in July, 1669, and which was sent to the governor of Albemarle in January, 1669/70; however, the later edition was printed and became the accepted version in Albemarle. The provisions referred to in this study are similar in both versions except for capitalization, spelling, and numbering of the articles. For an account of the different versions or editions of the Constitutions, see *C. R.*, I, xvii-xviii; II, 839-843.

October. A jury of the precinct court, like those for the higher courts, was to consist of twelve men, and its verdict was to be by a majority opinion. In personal actions exceeding fifty pounds, sterling, there was to be a right of appeal from the precinct court to the county court. The county court was to be composed of a sheriff and four justices, one from each precinct. In this court the sheriff would possess judicial powers and was to preside over its sessions as the "chief judge."<sup>11</sup> From the county court appeal to an appropriate Proprietor's court would be possible in all but the less important civil cases.

The Fundamental Constitutions provided a special court for the trial of all offenses punishable by death. One or more members of the Grand Council or of the Proprietors' courts, serving as an itinerant judge or judges, were to join with the sheriff and four justices of each county court twice each year to try these offenses. On these occasions the grand jury was to deliver to the itinerant judges a presentment of "such grievances, misdemeanours, exigencies, or defects, which they think necessary for the public good of the country." When informed through this channel, the appropriate Proprietor's court was then to take cognizance of the matters belonging in its particular jurisdiction, seeing that existing laws were made effectual and that desirable new laws were drafted.<sup>12</sup>

The Fundamental Constitutions also authorized several officials for the precinct and "colony." Each precinct was to have a register to enroll "all deeds, leases, judgments, mortgages, and other conveyances, which may concern any of the lands within the said precinct." The freeholders of the precinct were to nominate three men for this office of precinct register, one of whom was to be commissioned by the Chief Justice's Court, one of the Proprietors' courts. In addition to the precinct register there was to be a register in each colony to record the births, marriages, and deaths within the colony. Another officer in each colony was the constable. The freeholders of the colony were to elect this officer annually with whatever assistants the county court might authorize.<sup>13</sup>

When the Proprietors adopted the Fundamental Constitutions in 1669, they realized that there were not enough people in the province of Carolina to put their "Modell of Government" into

<sup>11</sup> C. R., I, 375. When such a court existed in North Carolina in 1693, the sheriff not only presided over the court but also served as its executive officer.

<sup>12</sup> C. R., I, 198.

<sup>13</sup> C. R., I, 201-202.

effect; however, they were eager to establish as much of it as possible. They included a copy of the document with the commission for the governor of the new settlement at Port Royal and instructed him regarding the formation of a temporary council and assembly. He was also directed to observe the specific land divisions and settlements prescribed in the Constitutions so that the Proprietors' plan of government could eventually be established.<sup>14</sup>

In Albemarle County the establishment of the Fundamental Constitutions meant that the Proprietors had the problem of imposing a new system of land tenure and government upon an existing one. When they drew up their instructions for Peter Carteret, its governor, in January, 1669/70, the Proprietors respected the inhabitants' land titles. Although they directed Carteret to have the surveyor-general lay out the county subdivisions as soon as he could, they stated that no land titles would be altered. Since this concession gave the nobles second choice in obtaining the better land, it impeded the growth of a landed aristocracy. The Proprietors also instructed Carteret to form a provisional government to operate until the establishment of the complete organization of government provided by the Fundamental Constitutions. Carteret was directed to issue writs to each of the four precincts requiring its inhabitants to elect five persons to join with five men named by the Proprietors to form the assembly. The assembly was then to select five men to combine with the Proprietors' five deputies to make up the governor's council. The council was to have the power of introducing all matters for the consideration of the Assembly. The Proprietors also empowered Carteret "by and with the consent of the Councell to establish such Courts and soe many as you shall for the present think fitt for the administration of Justice till our Grand Modell of Government cann come to be putt in execution." Furthermore, the governor and the Proprietors' deputies were to act in the place of the Palatine's Court in calling the Assembly into session, in ratifying its laws, and in filling all offices at the Proprietors' disposal.<sup>15</sup>

Since the records of North Carolina for the seventeenth century are meager, the nature of its early government is somewhat ob-

<sup>14</sup> *Collections of the South Carolina Historical Society*, V (1897), 119-123.

<sup>15</sup> *C. R.*, I, 181-182, 193, 196-197. With regard to the protection of existing land claims, see the act of 1673, *C. R.*, I, 218-219.

scure. The acts of the Albemarle Assembly ratified by the Proprietors in January, 1669/70, refer only to provincial officials and give no indication of the existence of lower courts. The composition of the Assembly itself is not revealed. The governor and his council had been exercising judicial as well as executive power, and when they sat as a court, the sheriff was their executive officer.<sup>16</sup> When Governor Carteret and his council sat as a court during 1670, the minutes of their actions refer to their court on one occasion as a court of "Chancery" and at a later date as a "Generall Court."<sup>17</sup> Later governors and their councils continued to hold such courts. The Court of Chancery was a court of equity. The General Court attended to such matters as civil and criminal suits, probation of deeds and wills, administration of estates, care of orphans, and laying out of roads. The "assistants" who joined the governor and the Proprietors' deputies as members of the General Court during the years which followed were probably the councilors whom the Assembly elected according to the governor's instructions.<sup>18</sup>

The date of the establishment of precinct courts is open to conjecture. In an account of his travels in Albemarle during 1671 and 1672 William Edmundson, a Quaker, refers to his holding a meeting at the house of "Tems, a justice of the peace."<sup>19</sup> In North Carolina during later years the title of "justices of the peace" always applied to the men who were members of the precinct court or its successor, the county court. The prodigious activity of the Assembly in 1672, when it enacted or re-enacted at least fifty-four laws, suggests that the government of Albemarle County had pro-

<sup>16</sup> C. R., I, 183-187.

<sup>17</sup> Abstracts of the minutes of these courts for 1670 appear in the *North Carolina Historical and Genealogical Register*, I (1900), 135-136.

<sup>18</sup> Until 1691 the governors of Albemarle County had instructions from the Proprietors which were similar to the instructions issued to Governor Carteret in 1669/70 (C.R., I, 235-239, 333-338, 362-363). Partial records exist of the minutes or orders of general courts held in 1672, 1673, 1679, 1680, 1684, and 1686, and the complete minutes of the General Court and the Court of Chancery are available for the years of 1694-1697 (*North Carolina Historical and Genealogical Register*, I [1900], 137-140; General Court Minutes, Oct., Dec., 1684; 1694-1697; Court of Chancery Minutes, 1694-1697; North Carolina Department of Archives and History, Raleigh, N. C.). The North Carolina Department of Archives and History is cited hereinafter as the NCDAH. The Minutes of the General Court for 1684 also appear in Branson Marley, ed., "Minutes of the General Court of Albemarle, 1684," *North Carolina Historical Review*, XIX (1942), 50-58.

<sup>19</sup> C. R., I, 216.



gressed enough by that date to justify the existence of local courts in its precincts.<sup>20</sup> In a letter to "the Present Government and Assembly of Albemarle County" in 1676 the Proprietors mentioned the courts of the precincts.<sup>21</sup>

The earliest extant precinct court records date from the governorship of John Harvey (1679-1680). One is an extract from a commission of the peace Harvey issued for Berkeley Precinct in 1679;<sup>22</sup> another is a clerk's certificate containing the names of persons who had proved their rights for land grants at a court held for Carteret Precinct on July 15, 1680.<sup>23</sup> There is also this fragment of the court minutes of Shaftesbury Precinct:

Att the Corte held for ye Precinct of Shaftesbury, the first day of April, 1680. Att Edward Smithwick's house, present, Mr. Thos. Cullen Judge, Mr. Joseph Chew, Mr. Henry Bonner, Mr. Josiah Gilbert, Commissioners.

It is ordered that Edward Smithwick have letters of Administration upon the estate of Hugh Smithwick, dec'd.

Robert Winley proves in Corte the will of Daniel Adams, dec'd. Charles Huntley enters 200 acres land on the North East side of Rockeyhock Creeke above the said George Deare is seated upon.<sup>24</sup>

Berkeley, Carteret, and Shaftesbury were names which the Proprietors apparently wished to fix on the precincts of Albemarle County, but these names failed to supplant the local names of Currituck, Pasquotank, Perquimans, and Chowan.<sup>25</sup>

<sup>20</sup> During the eighty years which followed, the Assembly seldom enacted as many as a dozen laws during any year. Although none of the acts of 1672 has been preserved, an extant act of 1673 relating to repeal of the fifty-fourth act of the previous year indicates that at least that number was passed in 1672 (*C. R.*, I, 219).

<sup>21</sup> *C. R.*, I, 229.

<sup>22</sup> The extract appears in Francis L. Hawks, *History of North Carolina: with Maps and Illustrations* (Fayetteville, 1857-1858), II, 139.

<sup>23</sup> General and Superior Court Records, 1676-1760, microfilm, NCDAH. The original of the certificate is in Edenton, N. C. An extract of this certificate appears in the *North Carolina Historical and Genealogical Register*, II (1900), 300-301.

<sup>24</sup> *North Carolina Historical and Genealogical Register*, I (1900), 613.

<sup>25</sup> In 1667 the Proprietors had authorized Governor Samuel Stephens and his council to name any future subdivisions of Albemarle in default of the Proprietors themselves giving any names (*C. R.*, I, 168). During the years from 1674 to 1680 land patents and court records use the Proprietors' names in referring to the precincts while the inhabitants were using the local names (*C. R.*, I, 249, 254, 256-261, 271, 279-281, 302). If the fourth precinct had been named Craven, the county and precincts would have had the names of the ranking Proprietors who were active at the time (*C. R.*, I, 180 ff.). Inasmuch as Lord Ashley did not become the Earl of Shaftesbury until 1672, the introduction of these names for the precincts probably did not occur before this date.



The earliest precinct records which show the powers exercised by the precinct courts are the court minutes for Perquimans from February, 1688/89, to April, 1693. Governor Phillip Ludwell's commission for the Perquimans Court issued in May, 1690, authorized Ralph Fletcher and the other justices:

To enquire by ye oaths of twelve good & lawfull men of the Precinct aforsd, of all & all manner of Criminall causes whatsoever (exceptinge for Treason, Murther, & other offences punisable with death) & them so proceed agst by finall determination, according to Justice & shall judge all Cyvill Causes whatsoever. And in all psonall actions not exceeding the Value of fifty pounds Sterlinge, without Appeale. And you are to keepe or cause to be kept ye sd Courts so often as by ye Fundamentall Constitutions is prescribed.<sup>26</sup>

This jurisdiction is the same as set forth in the Fundamental Constitutions except that the criminal offenses of the nobility were no longer exempted from trial before the precinct courts.<sup>27</sup> In practice, however, the Perquimans Court seldom exercised its power over criminal offenses during these four years. There is no indication that it impaneled a single grand jury to initiate the procedure of a criminal case. In fact during these four years the minutes indicate the court tried only one criminal action. The suit came to trial in July, 1692, when Hannah Hill complained that William Steward had put his marks on a shoat which she owned. A jury found the defendant guilty of petty larceny. Steward petitioned for mercy, and "out of pittty to his age" the court merely required a bond for his good behavior. The civil actions determined by the court also failed to measure up to the extensive powers of the commission. Except for three judgments of 1,882, 1,709, and 5,709 pounds of tobacco,<sup>28</sup> the amounts were small and usually in sums

<sup>26</sup> A copy of this commission appears transcribed in the minutes at the NCDAH. As only Fletcher and three justices are named, the clerk may have omitted the fourth prescribed by the Constitutions, for Robert Wilson appears as the fourth justice in later minutes. The first two years of these minutes, including this commission, are printed in the *North Carolina Historical and Genealogical Register*, III (1903), 429-439.

<sup>27</sup> C. R., I, 198.

<sup>28</sup> Perquimans Court Minutes, Oct., 1689; July, 1690; Jan., 1690/91. Since no distinction is made in the files of the NCDAH between the minutes of a court when it was termed a "precinct court" and the minutes of the same court when it became known as a "county court" in 1739, all precinct and county court minutes are cited hereinafter as C. M. In the Virginia county courts at this time 2,000 pounds of tobacco was considered the equivalent of £10, sterling (William W. Hening, ed., *The Statutes at Large; being a Collection of all the Laws of Virginia, From the First Session of the Legislature in the Year 1619*, Richmond, 1809-1823, III, 503-515).

of money varying from 10s. to £6 17s. 5d.<sup>29</sup> During its quarterly terms the court was concerned with the probation of deeds, wills and other papers, the administration of estates, the care of orphans and the recognition of freedom for indentured servants. Although mention is made of a sheriff and a constable in regard to the execution of a few court orders,<sup>30</sup> nothing in the minutes indicates that the court appointed them or that the people elected the constable according to the plan of the Fundamental Constitutions.<sup>31</sup>

In 1694 the office of county sheriff was discontinued, and the office of provost marshal was introduced. The marshal, with deputies to assist him, was assigned the responsibility for executing the orders of the General Court and of the precinct courts.<sup>32</sup>

Before the end of the century the jurisdiction of the precinct courts was revised without reference to the Fundamental Constitutions. A commission of the peace for Chowan Precinct in 1699 empowered its six justices "to try by a Jury of Twelve true & lawfull men all petty Larcencies all unlawfull Ryotts and Routs" that were committed in their precinct. In civil suits the court was authorized to determine all personal actions in which the amount did not exceed fifty pounds and all causes whatsoever relating to orphans and their estates.<sup>33</sup> The minutes of the Perquimans Court from January, 1696/97, to October, 1706, reveal that its justices were still not exercising to the fullest its authorized criminal jurisdiction, the court having neither a grand jury nor a prosecuting attorney. However, in addition to exercising the powers prescribed in its commission, which was similar to that of Chowan, the justices of Perquimans Precinct were appointing the constables and road overseers of the precinct and regulating the laying out and

<sup>29</sup> Perquimans C. M., Oct., 1692; Jan., 1692/93.

<sup>30</sup> Perquimans C. M., April, Oct., 1690.

<sup>31</sup> Perquimans C. M., Feb., 1688/89—April, 1693; *North Carolina Historical and Genealogical Register*, III (1903), 429-439.

<sup>32</sup> Although the office of sheriff did not reappear until 1739, the term continued to appear in legislation when laws of the pre-1694 period were reenacted. For such a law, see Walter Clark, ed., *The State Records of North Carolina* (Winston and Goldsboro, 1895-1907), XXIII, 16 (1715, c. 14). The sixteen volumes of the *State Records* are a continuation of the ten volumes, I-X, of the *Colonial Records*. Volumes XXIII and XXV contain the laws of North Carolina from 1669 through 1790 which were available to the editor. The year and chapter of each law are added to the volume and page to aid in finding a law in collections other than the *State Records*. The *State Records* are cited hereinafter as *S. R.*

<sup>33</sup> Chowan County Papers, I, 12. For another early commission, see Perquimans C. M., Feb., 1702/03; *C. R.*, I, 574-575.

maintenance of the roads and bridges as early as 1697. In 1700 they approved the location and erection of a gristmill.<sup>34</sup>

When the precinct court began to appoint local officials and to supervise local roads and mills, the court acquired greater significance as a governing agency. Its justices were exercising administrative as well as judicial powers. The precinct court was obtaining authority previously exercised by the Assembly and the General Court. As the justices seemed to have received their administrative authority through legislative enactment,<sup>35</sup> they could expect to have such jurisdiction extended by further laws in subsequent years.

Above the precinct courts there were two courts of higher jurisdiction—the General Court and the Court of Chancery. Until March, 1697/98, the membership of both consisted of the governor or deputy governor and the council. At that date the composition of the General Court was revised to consist of six justices commissioned by the deputy governor and the council. These justices were empowered to “hear & determine all treasons misprisons of treasons Roberys felonys trespasses Crimes offences breaches of the peace & Misdemeanors &c in the Government of North Carolina.”<sup>36</sup> The deputy governor and the council continued to serve as the Court of Chancery. The usual difference between these courts was that the General Court observed common and statutory law while the Court of Chancery followed the principles of equity. The General Court usually heard the appeals from the precinct courts, but an “Injunction in Chancery” could remove an appeal to the Court of Chancery, the court of final jurisdiction within the province.<sup>37</sup>

In 1696, before the above court changes, Governor John Archdale and the Proprietors’ deputies had created a new county in North Carolina and named it Bath County in honor of John Gran-

<sup>34</sup> Perquimans C. M., April, 1697; April, 1698; Jan., 1699/1700; *C. R.*, I, 486, 493, 531. The gap of three years in the minutes of the Perquimans Court from 1694 to 1697 and the lack of extant laws from this period prevent the determination of when the precinct courts acquired these administrative powers.

<sup>35</sup> Although the laws of this period have not been preserved, later laws delegate these powers to the court.

<sup>36</sup> General Court Minutes, March, 1697/98.

<sup>37</sup> General Court Minutes, Sept., Nov., 1694; Court of Chancery Minutes, Nov., 1694; *C. R.*, I, 415-417, 454-455. Governor John Archdale himself presided at the Court of Chancery on Feb. 25-26, 1696/97, held for Albemarle.

ville, Earl of Bath, a Proprietor.<sup>38</sup> The center of the new settlement was the region of the Pamlico River, some forty miles south of Albemarle Sound. Since the population of the new county was at first too small for it to have its own assembly and general court the governor authorized the inhabitants to elect two representatives to the Albemarle Assembly and to use the existing courts of the older county. Archdale's instructions from the Proprietors regarding this arrangement directed that it be only tentative and envisaged that as soon as possible Bath should become a county palatine with its own assembly and courts.<sup>39</sup> Although the dependence of Bath County on the government already established in Albemarle was originally intended to be temporary, the relationship continued throughout the existence of the counties. As a consequence, the Assembly and the General Court of Albemarle became the General Assembly and the General Court of North Carolina.

Prior to the creation of the new county the precincts of North Carolina had possessed much in common. The four precincts of Currituck, Pasquotank, Perquimans, and Chowan had been established at the same time; and their inhabitants had lived under the same government, customs, and traditions for approximately thirty years. As the rivers of this region emptied into Albemarle Sound transportation by water from one section of the county to another was relatively easy and was a means of fostering common interests among the precincts.

The union of Albemarle and Bath counties into a single government contained the seeds of discontent and political strife. The union was basically one of inequality. Each of the four older precincts was entitled to elect five members to the Assembly while only two were allotted to Bath or any of its later precincts. Initially the difference in population would probably have justified this differentiation, but the only means of changing the representation of the southern precincts was in the hands of the Assembly. Since the members from the precincts of Albemarle composed a majority of the Assembly, they would scarcely be expected to relinquish readily their control of the government.

The difficulties of communication tended to keep the two

<sup>38</sup> He bought the share owned originally by the Duke of Albemarle.

<sup>39</sup> The Proprietors' instructions to Archdale in these matters were similar to those for Ludwell (*C. R.*, I, 375-378; *V*, 85).



counties from merging their interests and activities. Although the distance overland from Pamlico River to Albemarle Sound was no greater than the land distance between some sections of Currituck and Chowan precincts, much of the communication and trade was conducted by water routes in which the distance between the two counties was twice the distance between the Albemarle precincts. Travel by boat was often slow and difficult. In 1712 Baron de Graffenried's trip from New Bern to Chowan required ten days instead of the two he expected.<sup>40</sup> As the settlements of Bath County extended farther southward and westward, its inhabitants were even more removed from those of Albemarle, and the importance of their foreign trade linked each section closer commercially to London and New England than to each other.<sup>41</sup>

By 1729, the year in which North Carolina became a royal colony, settlements had been made along the lower parts of all the rivers emptying into the ocean or numerous sounds, and in some instances the pioneers had followed the rivers into the interior. Although the Proprietors had intended as late as 1694 to confine Albemarle County to the area bounded on the south and the west by the Sound and Chowan River, they had not been successful.<sup>42</sup> The region west of the Chowan River was incorporated into the precinct of Bertie in 1722, and the lands immediately south of Albemarle Sound became Tyrrell Precinct in 1729, making a total of six precincts in Albemarle County. By 1729 Bath County consisted of five precincts: Beaufort, Hyde, Craven, Carteret, and New Hanover. With these precincts Bath County extended along the seaboard from Pamlico Sound to the South Carolina boundary below Cape Fear.

As the population of Bath County increased, the inhabitants of the southern section of North Carolina had two grievances. One was their limited and unequal representation in the Assembly.<sup>43</sup> In 1729 the six precincts of Albemarle were authorized five

<sup>40</sup> C. R., I, 951. De Graffenried was the leader of the Palatine settlers who came to New Bern in 1710.

<sup>41</sup> For a treatment of travel difficulties during the Proprietary period, see F. W. Clonts, "Travel and Transportation in Colonial North Carolina," *North Carolina Historical Review*, III (1926), 16-35.

<sup>42</sup> C. R., I, 391.

<sup>43</sup> For a discussion in greater detail of the controversy which followed in respect to representation, see Lawrence F. London, "The Representation Controversy in Colonial North Carolina," *North Carolina Historical Review*, XI (1934), 255-270.



members each for a total of thirty; yet the five precincts of Bath had only two representatives each for a total of ten.<sup>44</sup> This meant that the oldest precincts could muster an overwhelming majority on any issue of sectional interest. The other complaint was against the retention of the seat of the government in the northeastern section of the province. Despite the tendency for the center of population to move southwestward the two principal agencies of the government, the Assembly and the General Court, were held at Edenton in Chowan.

The first two governors appointed by the Crown, George Burrington (1731-1734) and Gabriel Johnston (1734-1752), were aware of the complaints about unequal representation in the Assembly and about the location of the Assembly and General Court in Edenton. Each of these two governors endeavored to remedy these grievances. Burrington's proposed solution to the problem of representation would have reversed the representation of the sections and given the Bath precincts a majority; he recommended to the Board of Trade in 1731 that the four oldest precincts be combined into two and that each precinct throughout the province be restricted to two members in the Assembly.<sup>45</sup> With respect to the relocation of the agencies of government Burrington suggested to the Assembly that "the Chief Justice with his Assistants should for the ease of the people hold Courts in three different parts of the Province twice a year."<sup>46</sup> Despite some support for the latter proposal, Burrington was no more successful in realizing it than the other.<sup>47</sup>

<sup>44</sup> The act of 1729 creating Tyrrell Precinct authorized a minimum of two representatives and a maximum of five, the number to be elected being on the basis of one representative for every hundred tithables in the precinct (*S.R.*, XXV, 213 [c.4]). Not included in these figures are the members from the towns. Edenton, Bath, and New Bern had one representative each.

<sup>45</sup> *C. R.*, III, 207.

<sup>46</sup> *C. R.*, III, 287.

<sup>47</sup> An act "for establishing and fixing the Supream Courts in this Province and for enlarging the power of the Precinct Courts" was read and passed for the third time by the lower house of the Assembly in 1731, but Burrington refused to proclaim it because of its many amendments (*C. R.*, III, 314, 325). The plan under consideration was for the erection of three counties within the province and for each to have its own general court (*C. R.*, III, 322). The enlarging of the precinct courts' power would probably have meant restoring to the courts a civil jurisdiction over amounts to a hundred pounds which an act of 1727 seems to have established temporarily. While only the title of the act has been preserved, other records indicate the amount (*C. R.*, III, 194; *S. R.*, XXIII, 111 [c.6]; Pasquotank Warrants for Arrests, 1720-1740). Another bill to enlarge the power of the precinct courts was introduced in the Assembly in 1733, but it failed to be enacted (*C. R.*, III, 611).

Writing to the Board of Trade in February, 1731/32, Burrington described the difficulties his predecessors had faced and in so doing suggested a possible explanation of his own failure:

The Inhabitants of North Carolina, are not Industrious but subtle and crafty to admiration, allways behaved insolently to their Governours, some they have Imprisoned, drove others out of the Country, at other times sett up two or three supported by Men under Arms, all the Governors that ever were in this Province lived in fear of the People (except myself) and D[r]eaded their Assemblies.

The People are neither to be cajoled or outwitted, whenever a Governour attempts to affect anything by these means, he will loose his Labour and show his Ignorance.<sup>48</sup>

During a longer term of office Gabriel Johnston<sup>49</sup> was more successful than Burrington in remedying the inequalities of representation and relocating the seat of government.<sup>50</sup> In regard to the latter problem some progress was made at the session of the Assembly which ended in March, 1738/39. The laws enacted during this session reorganized the court system for the first time in forty years. The counties of Albemarle and Bath were abolished and were never to be revived. At the same time the precincts were termed "counties." An act provided for "Courts of Assize, Oyer and Terminer, and General Gaol Delivery" to be held twice annually at Bath, New Bern, and Newton (Wilmington) by the Chief Justice of the General Court and the justices who were his assistants. These district or assize courts were essentially an extension of the General Court to permit the hearing and determination of criminal cases and the trial of civil actions at locations convenient to the people. The preamble of the act explains the need for such courts:

Whereas by the great Distance of the several Counties of this Province from the Place where the supream Courts of Justice of this Province are held, the Inhabitants of the said Counties upon that Account and the great charge Difficulty and expence of Traveling thither and attending the said Court upon Tryal and of Bring-

<sup>48</sup> C. R., III, 338.

<sup>49</sup> Johnston was governor from 1734 to 1752, a period of eighteen years, the longest term of any North Carolina governor.

<sup>50</sup> Although these two questions were not always uppermost in Johnston's mind, the quest for their solution is important to this study in that it led to a major revision of the court system. Johnston himself was greatly concerned with the collection of quitrents.

ing and Procuring Witnesses to come and attend the said Court, suffer many Inconveniences and Hardships, and by that means likewise many great and Enormous crimes are committed with Impunity. . . .<sup>51</sup>

The justices of the General Court continued to hold that court at Edenton, where they heard and determined the criminal and civil cases for the Edenton district and heard the pleadings in the civil actions to be tried in the other districts.

In the revisions of March, 1738/39, the courts which were previously known as "precinct courts" were designated "county courts." The change was only one of terminology. Although these county courts acquired some new powers, they were a continuation of the precinct courts. All actions pending before the precinct courts continued over on the dockets of the county courts when this change in names occurred.

The increased authority the county courts gained under the laws of 1738/39 enhanced the importance of the courts and the influence of their justices. In personal actions the maximum amount of debt or damages determinable by the courts was raised from fifty to one hundred pounds, current money,<sup>52</sup> to compensate for the effects of inflation. The increased civil jurisdiction brought a larger number of cases before the court. There were important changes in the court's procedure for exercising its criminal jurisdiction. For the first time the courts had a prosecuting attorney, the deputy appointed by the attorney-general for each county. Moreover, the courts could summon grand juries to indict or present any persons guilty of "Petit Larcenys, Assaults, Battery, Breaches of the Peace and Behaviour, and all Misdemeanors and

<sup>51</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," North Carolina Acts, 1738, Colonial Office, Class 5 (America and West Indies), Vol. 333, Public Record Office, London. Acts located in the Public Record Office are hereinafter cited as N. C. Acts, the year, C. O. 5/333, P. R. O.

<sup>52</sup> The term "current money" applied to bills of credit issued by the authority of the Assembly. From 1739 to 1750 the exchange between current money and sterling was 10 to 1. On this basis £1000, current money, was worth £100, sterling. The exchange between current money and "proclamation money," another common currency, was 7½ to 1. This meant that £750, current money, was worth £100, proclamation. The term "bills" was used frequently to refer to current money. For a study of Colonial currency, see Charles J. Bullock, "The Paper Currency of North Carolina," *Essays on the Monetary History of the United States* (New York, 1900), pp. 123-204.

Crimes of an Inferior Nature (forgery Perjury and Mayhem excepted)."<sup>53</sup>

The county courts also obtained new administrative powers. One of them was the authority to levy annual taxes. Although in 1738/39 only the northern counties received this privilege in connection with the payment of their quitrents,<sup>54</sup> the power was extended to all counties in 1740 and was amplified in later years. The courts also secured some control over the appointment of their executive officer, the sheriff. Each court had the right to nominate three men from whom the governor had to select one as sheriff. In addition to executing the orders of their respective county courts the sheriffs served as officers of the higher courts, as collectors of all taxes, and as supervisors of the elections. When the sheriffs assumed these duties which the marshal and his deputies had discharged before 1739, the sheriffs were actually serving in a dual capacity—as officers of the province as well as of their counties.

While Governor Johnston favored the establishment of district courts and the enlargement of the powers of the precinct courts provided by the court act of 1738/39, he regretted that the offices of the provincial officials were not located in some town near the center of the province.<sup>55</sup> During the years which followed he endeavored to have the Assembly designate such a town as the seat of the government in the place of Edenton.<sup>56</sup> Naturally the strongest opposition to this change came from the representatives of the northern counties. As long as they maintained a majority in the Assembly, they could block all legislation on the subject. In 1746 Johnston decided to stage an all-out effort to obtain the relocation of the capital and to equalize the representation in the Assembly from each county. He therefore prorogued the Assembly in session during June at New Bern and called it to meet in Novem-

<sup>53</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>54</sup> "An Act for Providing his Majesty a Rent Roll for securing his Majesty's Quit Rents; for the Remission of Arrears of Quit Rents, and for Quieting the Inhabitants in their Possessions; and for the better settlement of His Majesty's Province of North Carolina," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>55</sup> C. R., IV, 415, 423-424.

<sup>56</sup> One act of 1738/39 directed the clerk of the General Court to keep his office and records in Edenton ("An Act to appropriate two Thousand Pounds Currency Bill Money to erect a Sufficient Goal [*sic*], and Office and Place for the safe-keeping the Records of the General Court and for Repairing the Court House at Edenton and for the other Purposes therein mentioned," N. C. Acts, 1738, C. O. 5/333, P. R. O.).



ber at Wilmington. By this action he hoped to have as few northern representatives present as possible. In November he was not disappointed, for none of the northern members attended. By all remaining absent the representatives from the northern counties expected to prevent any legislative action because a quorum consisted of a majority of the membership.<sup>57</sup> Considering that the fifteen members present were sufficient to be a quorum, Samuel Swann, the speaker, opened the session and as soon as possible proceeded to have the legislation enacted which Johnston desired. One act limited the representation of each county in the House of Burgesses to two members exclusive of those from towns.<sup>58</sup> The other law fixed New Bern as the site for holding the Court of Chancery and the General Court and as the location for the offices of the provincial secretary and the clerks of the above two courts. Another feature of this latter act was the consolidation into a single law of the provisions of earlier acts relating to court procedure.<sup>59</sup>

Considering that the laws passed at Wilmington were not valid for lack of an actual quorum and that the Assembly could not revoke a privilege which the Proprietors had granted as early as 1670, the inhabitants in the northern counties proceeded to elect their usual number of members to the Assembly in the election of February, 1746/47. When the Assembly refused to seat their representatives,<sup>60</sup> the people in these counties refused to recognize the legality of the laws passed thereafter. Bishop Spangenburg of the Moravian Church described the conditions in the northern counties in 1752, after this situation had lasted several years:

The older counties hereupon much irritated, refused to send any representatives [to the Assembly after 1747] at all, but dispatched an agent to England with a view of haveing their rights restored to them. Meanwhile untill this matter is decided they will not acknowledge any act of the assembly. There is therefore in the older counties a perfect anarchy. As a result crimes are of frequent occurrence, such as murder robbery &c.

But the criminals cannot be brought to justice. The citizens do not appear as jurors [at the district courts], and if [such a] court is held to decide such criminal matters no one is present.

<sup>57</sup> *C. R.*, IV, 1189-1190. The membership at the time was fifty-four. One half of the Assembly's membership had also been considered a quorum (*C. R.*, V, 88-89).

<sup>58</sup> *S. R.*, XXIII, 251-252 (c. 1).

<sup>59</sup> *S. R.*, XXIII, 252-267 (c. 2).

<sup>60</sup> *C. R.*, IV, 857-858, 1180-1181.



If any one is imprisoned the prison is broken open and no justice administered. In short most matters are decided by blows. Still the County Courts are held regularly and what belongs to their jurisdiction receives the customary attention.<sup>61</sup>

Doubtless there were grounds for the Bishop's description, particularly with respect to the assize courts; however, the northern counties did not completely ignore the provincial government. The courts continued to send their nominations for sheriff to the governor, and he in turn made the appointments. Grand juries also met regularly and returned indictments or presentments for the offenses within the county court's jurisdiction. Although the Bishop mentioned the regularity of county court sessions, at least one interruption did occur; no court was held in Pasquotank County from October, 1748, to April, 1750.<sup>62</sup>

The period of unrest in the northern counties continued until 1754. In April of that year the King disallowed the two acts of 1746 pertaining to representation and relocation of the government.<sup>63</sup> A few months later the royal instructions to the new governor, Arthur Dobbs, directed him to issue writs for the election of a new Assembly in which the northern counties regained their privileged representation.<sup>64</sup> While Governor Johnston had only temporary success in equalizing the representation in the Assembly, his efforts to relocate the government were vindicated by the subsequent readoption of New Bern as the capital and the enactment of later laws providing circuit or district courts and county courts similar to those created during his term.

One of Governor Johnston's important contributions to the government of North Carolina was a general revision of the laws. He reported to the 1736 Assembly that he was unable to "find that there is one compleat Copy of them [the codification of laws made in 1715] in any one place, neither have I yet seen two copies of them which perfectly agree."<sup>65</sup> Two years later the members of the Assembly responded favorably to the Governor's plan for a revision. They informed Johnston that he had "very justly observed the necessity of reviseing and printing the Laws of the Province" and that they intended "to direct the printing of them when they shall have past a revisal whereby the Magistrates

<sup>61</sup> C. R., IV, 1311-1312.

<sup>62</sup> Pasquotank C. M., April, 1750.

<sup>63</sup> C. R., V, 117.

<sup>64</sup> C. R., V, 1110.

<sup>65</sup> C. R., IV, 227.

may become more sensible of their duty and the people of the Province better acquainted with what so nearly concerns them."<sup>66</sup> During each session of the Assembly for the next twelve years the members reconsidered certain aspects of life in the province. Their efforts brought forth new laws regarding the church, personal conduct, currency and taxes, judicial procedure, militia, servants and slaves, roads, weights and measures, and ordinaries. By 1749 the task of revision was completed, and the Assembly surveyed the legislation that would be in effect at the conclusion of the session. It consisted of two parts. One was the enumeration of the English statutes which were in "full Force, Power, and Virtue, as if the same had been specially Enacted and made for this Province."<sup>67</sup> The other was the confirmation of all acts of Assembly which were to remain effective.<sup>68</sup> The revised laws were then ready to be printed, a task which James Davis completed in 1752.

The legislation enacted from 1738/39 to 1749 completed the establishment of the county court in North Carolina with the organization and authority which the court was to retain with few changes during the remainder of the Colonial period.<sup>69</sup> The powers in the hands of the county court at the middle of the eighteenth century had been acquired during the previous eighty years. Recognizing the need for local as well as provincial government in 1669, the Proprietors had incorporated in the Fundamental Constitutions the subdivision of each palatine county into four precincts. These precincts, or counties as they were later termed, had their own judicial body, the precinct courts. While the population was small and the bounds of Albemarle County were confined to the northeastern part of the province, the precinct courts determined only the less important civil cases and exercised probate authority. When the population increased and the bounds of North Carolina were extended before the end of the seventeenth century to include more of the eastern seaboard, the precinct courts acquired a few administrative powers. During the forty years which followed, the precinct courts secured additional administrative responsibilities. The largest increase of the court's powers

<sup>66</sup> C. R., IV, 386.

<sup>67</sup> S. R., XXIII, 317-329 (c. 1).

<sup>68</sup> S. R., XXIII, 332-341 (c. 6).

<sup>69</sup> For a contemporary work on the powers of the justices of the peace and the county courts, see James Davis, *The Office and Authority of a Justice of the Peace* (New Bern, 1774).

came during the decade which began in 1738/39. March, 1738/39, was the date of the change in name from "precinct" to "county." The development of the court's authority followed and, in part, was dependent upon the growth of population in the province and the extension of the settlement westward. William L. Saunders estimates the population at 3,000 or less in 1675 and approximately 90,000 in 1752. Almost half of the 90,000 was added during Governor Johnston's administration from 1734 to 1752.<sup>70</sup> The four precincts of 1670 situated in the northeastern part of the province had expanded by 1750 into nineteen counties extending southward over the entire seaboard and westward into the Piedmont section.<sup>71</sup>

<sup>70</sup> C. R., II, x; IV, xx; Evarts B. Greene and Virginia D. Harrington, *American Population before the Federal Census of 1790* (New York, 1932), pp. 156-157.

<sup>71</sup> By court districts these nineteen were: Currituck, Pasquotank, Perquimans, Chowan, Bertie, and Tyrrell of the Edenton District; Northampton, Edgecombe, and Granville of the Edgecombe District; Hyde, Beaufort, Johnston, Craven, and Carteret of the New Bern District; and Onslow, New Hanover, Bladen, Duplin, and Anson of the Wilmington District.

## Organization of the Court

The members or judges of a county court were the justices of the peace of the county. These justices held their office as individual magistrates and as members of the county court by virtue of a commission of the peace that the governor and his council issued for the county. The instructions for the royal governor directed him to appoint as justices of the peace only such persons as were "fit" for the responsibility and to make the selection "with the advice and consent" of the council.<sup>1</sup> The governor seems to have made his appointments from the prominent individuals of the county, particularly those who were active in the militia, the vestry, and the local and provincial courts. Governor Arthur Dobbs (1754-1765) reported to the Board of Trade in 1760 that he had appointed "no Justices but in Council, and by their consent, and when any were appointed always took the recommendation of some of the Council when they knew any qualified or of the Members of the respective Counties, or of gentlemen of the neighborhood of the best Fortunes & characters."<sup>2</sup> Earlier governors probably followed the same procedure.

When a new county was established, the governor and his council issued a commission of the peace appointing the justices for the new subdivision. In this commission the governor normally included the names of any justices of the parent county or counties who resided within the bounds of the new county. To these he added the names of enough other men of prominence to

<sup>1</sup> *C. R.*, III, 102, 498.

<sup>2</sup> *C. R.*, VI, 296.

secure the attendance of at least three justices at each term of county court, three being the minimum number of justices who could hold such a court. Upon making these appointments the governor had to replenish the number of justices in the older county or counties. This he did by appointing new justices and having their names added to the commissions of the older counties. The governor took similar action when he replaced appointees who died or never qualified. Instead of granting these supplemental commissions, the governor often preferred to issue a "new commission of the peace" in which he retained the names of justices being held over and added the new members.<sup>3</sup> The governor also granted a new commission to each precinct or county shortly after he assumed office.<sup>4</sup> Governor Johnston issued new commissions to the counties again at the time of the change in designation from "precincts" to "counties."<sup>5</sup> After any new commission had been issued, both the old and new justices had to qualify before exercising the powers of the office.

Although in the Proprietary period the governor and the council appointed justices of the peace to serve "During our Pleasure,"<sup>6</sup> the instructions to the royal governors in 1730 and 1733 prohibited use of this phrase. Because appointments made to continue "during pleasure" seemed to foster the arbitrary removals of justices by the governors, the instructions to Governors Burrington (1731-1734) and Johnston (1734-1752) directed them "not to express any limitation of time in the Commissions which you are to grant." This change was not intended to restrict removals on just grounds. The governor could remove justices of the peace from office provided he signified to the king and the Board of Trade good and sufficient cause for each displacement.<sup>7</sup>

The tenure of justices of the peace became an issue between Governor Johnston and the Assembly in 1736. Johnston had issued commissions of the peace in which the justices were appointed "During my Pleasure." For a while there was no reaction. Then, in May, 1736, the Governor and council appointed three new jus-

<sup>3</sup> C. R., IV, 218, 330, 447, 460, 713, 813, 814.

<sup>4</sup> C. R., II, 526; IV, 46-48.

<sup>5</sup> C. R., IV, 345-347.

<sup>6</sup> Perquimans C. M., Feb., 1702/03; C. R., I, 574-575; Commissions issued in the years 1720 and 1724, Pasquotank Commissions and Orders, 1720-1789; Chowan County Papers, I, 73.

<sup>7</sup> C. R., III, 102, 498.



tices for New Hanover Precinct to replace an equal number who had permitted and encouraged Samuel Swann "to plead as an Attorney before the Court without a Licence in contempt of an authority being contrary to an express clause of the Commission."<sup>8</sup> At the Assembly in October, members of the lower house requested the Governor "that no Magistrate in this Province be superseded in his Office, without complaint for malefeasance in his said Office, and he be convicted of the same upon hearing before the Govr and Council." At the same time the members complained of the Governor's insertion of the term "During my Pleasure" in the commissions of the peace. They maintained that it was contrary to the law and asked that it be expunged.<sup>9</sup> Johnston replied that a commission was always *durante bene placito* rather than *quamdiu se bene gesserint* and that he would not make any change until he had the King's "special direction."<sup>10</sup>

Despite Johnston's reply the complaints of the Assembly were evidently effective. The phrase "During my Pleasure" did not appear in the commissions issued in 1739 and 1742.<sup>11</sup> Moreover, during the next fourteen years Governor Johnston and his council gave a hearing to at least seven of the ten justices they removed from office. The charges against these justices included such things as administering oaths to people in obscene language, refusing to participate in a trial of a Negro, acting "with great Partiality on the seat of Justice," and committing "divers abuses."<sup>12</sup>

When the governor and the council decided to remove a justice of the peace from office, they issued an order to the respective court certifying the action they had taken and directing that his name be struck from the commission. This disqualification was sometimes of a short duration. The three justices of Craven County who were removed from office in February, 1743/44, were reappointed the following December.<sup>13</sup>

The number of justices of the peace named in each commission varied from county to county and from time to time within each county. The number for Perquimans in 1703 was six, in 1724

<sup>8</sup> C. R., IV, 218.

<sup>9</sup> C. R., IV, 237.

<sup>10</sup> C. R., IV, 238-239.

<sup>11</sup> Chowan County Papers, III, 37; Pasquotank Justices Appointed, 1728-1774.

<sup>12</sup> C. R., IV, 460, 626, 677, 682-683, 713, 760, 814, 949, 1032, 1034, 1050.

<sup>13</sup> C. R., IV, 677, 712. See *infra*, p. 58, for the cause of their removal.

seven, in 1731 thirteen, in 1735 and in 1739 twelve.<sup>14</sup> These figures were approximately the average for the other precincts and counties during the same period. In March, 1734/35, Governor Johnston appointed twelve justices for each of ten precincts, eight for Currituck, and fifteen for Bertie.<sup>15</sup> Under the fourteen commissions issued in March, 1738/39, Hyde had ten justices and New Hanover twenty-two, and the number of justices in the remainder ranged from twelve to fifteen.<sup>16</sup> This average of twelve to fourteen justices in each court during the second quarter of the eighteenth century seems to have been about twice the average number of the previous twenty-five years.

As the order in which the names appeared in the commission indicated the rank of the justices,<sup>17</sup> the justices were sensitive to any alterations. The presiding justice at a court session was the one of those present whose name appeared first in the commission. Should the names in a newly issued commission be disarranged, the justices were quick to complain. In replying to such a complaint from the Perquimans Court, Governor Charles Eden (1714-1722) asked the justices to place themselves at their next sitting "as they where [*sic*] in ye preceeding Commission."<sup>18</sup> Prior to issuing a new commission for Pasquotank Precinct in 1728 Governor Richard Everard and his council endeavored to avoid this difficulty. They ordered that each of the men designated for appointment be summoned to the next court to show the time of their being first appointed justices "to prevent any Confusion in the Placing them in the Comission."<sup>19</sup>

The ranking justice of the commission of the peace was the chairman of the court. During the seventeenth century the title of this office was "Steward," the name given it by the Fundamental Constitutions.<sup>20</sup> As late as 1737 the chairman was often termed the "Judge" of the court, and the other justices were occasionally spoken of as his "Assistants."<sup>21</sup> In legislation the terms of "the

<sup>14</sup> C. R., I, 574; II, 526; III, 234; IV, 47, 346.

<sup>15</sup> C. R., IV, 46-48.

<sup>16</sup> C. R., IV, 345-347.

<sup>17</sup> The council minutes do not list the justices according to rank in their orders for new commissions.

<sup>18</sup> Gov. Eden to Gentlemen [of the Perquimans Court], Jan. 13, 1714/15, Perquimans Court Papers, 1709-1848.

<sup>19</sup> C. R., II, 818.

<sup>20</sup> Prequimans C. M., 1689-1693; *North Carolina Historical and Genealogical Register*, III (1903), 429-439.

<sup>21</sup> Perquimans C. M., 1697-1703; July, 1736; Jan., 1736/37; Craven C. M., 1730-1733; Carteret C. M., 1734-1736; Pasquotank C. M., April, 1737.

first in the Commission" and "President" refer to the chairman.<sup>22</sup>

Certain duties fell to the chairman either by custom or by law. As the ranking justice, he presided over the court when in session, charged the juries, collected the opinions of the justices, and pronounced the judgment given by the majority of the court.<sup>23</sup> Under an act of 1715 which was effective until 1741 the chairman set the time and place for holding a special court to try a slave accused of committing any crime.<sup>24</sup> After 1743 the chairman signed the writs issued by the county courts directing the constables to warn the inhabitants to list their taxables.<sup>25</sup> Governors Eden and Burrington included the names of the chairmen of the precinct courts in their general commissions of the peace thereby authorizing these justices to serve as members of the General Court.<sup>26</sup> In some county courts the chairman held and disbursed the county funds.<sup>27</sup>

During the Proprietary period the governor, in issuing a commission of the peace, designated certain justices of whom one was required to be present at the holding of the precinct court. The justices so named were the first three or more in the commission.<sup>28</sup> They had the greatest length of service and for that reason were expected to be the most learned in the law. This qualification was not specified in the North Carolina commissions, but these men were known as "justices of the quorum" from the term *quorum aliquem* (of whom one) in the Latin form of the English commission that required one to be learned in the law. By March, 1738/39, the governor no longer made such distinction between the justices in the commission. Any three or more of them could hold the county court. The exact date when the governor ceased to designate justices of the quorum is uncertain, but it lies between

<sup>22</sup> S. R., XXIII, 23 (1715, c. 21), 64 (1715, c. 46), 143 (1740, c. 2).

<sup>23</sup> To facilitate matters the chairman of the New Hanover Court kept a separate docket for his own use of the cases and causes before the court and the progress made in disposing of them (New Hanover C. M., Sept., Dec. 1741).

<sup>24</sup> S. R., XXIII, 64 (c. 46).

<sup>25</sup> S. R., XXIII, 210 (1743, c. 2); Carteret C. M., June, 1743; Chowan County Papers, IV, 85; Onslow C. M., July, 1745.

<sup>26</sup> C. R., II, 264, 526; III, 251; General Court Minutes, 1731-1732.

<sup>27</sup> *Infra*, p. 118.

<sup>28</sup> Only two were designated "of the quorum" in a commission in 1679 when the small number of four justices was appointed (Hawks, *History of North Carolina*, II, 139).

the years 1729 and 1739, probably occurring in 1731, when Governor Burrington came into office.<sup>29</sup>

When the justices of the peace held the county court, they were assisted by several other officials. The principal ones were the sheriff and the clerk. Both of these officers frequently appointed deputies upon whom most, if not all, of their duties fell. The other personnel were the coroner, the register, the constables, the king's attorney, and the lawyers.

The sheriff was the executive officer of the court. He or his crier opened the court with the proclamation for silence and subsequently called each action on the dockets. When ordered by the court, he returned the names of men he had summoned for service on the grand and petit juries. As a police officer, he had in his custody or under bond the defendants in the actions and suits before the court. If they were in his custody or in jail, he brought them before the court at the proper time to answer as the case required. Prior to the opening of court the sheriff also summoned the witnesses needed in the cases pending on the dockets. During and after the court session the sheriff served the court's orders and writs, levied executions, proclaimed acquittals, and supervised the infliction of punishments: the stocks and pillory, whippings, brandings, croppings of ears, and hangings of slaves.<sup>30</sup>

Prior to 1739 the provost marshal was responsible to the precinct courts for performing the duties which the sheriff later acquired; but as the duties of the provost marshal were not confined to a single precinct, he found it necessary to appoint a deputy to serve in each of the precincts.<sup>31</sup>

An important difference existed in the methods by which a deputy marshal and a sheriff were appointed. The provost marshal merely issued a deputation or commission to his appointee as his deputy for a particular precinct.<sup>32</sup> Hence the local court had no part in naming the deputy marshal. On the other hand, however,

<sup>29</sup> Carteret C. M., Sept., 1731; Perquimans C. M., April, 1735. These court minutes make no distinction among the justices.

<sup>30</sup> John Brickell states that a Negro always served as the hangman in the execution of a slave (*The Natural History of North Carolina*, Dublin, 1737, reprinted in Raleigh, 1911, p. 272).

<sup>31</sup> In addition to the duties listed which pertain to the court procedure, both of these officers or their deputies also presided over the elections of members to the Assembly and were responsible for collecting taxes (S. R., XXIII, 12-13 [1715, c. 10], 207-210 [1743, c. 1]; *infra*, p. 114 ff.).

<sup>32</sup> Onslow C. M., April, 1736; Perquimans C. M., Jan., 1735/36.



the court had a large share in the choice of a sheriff. By the act of March, 1738/39, creating the office of sheriff, every county court nominated three of its members for the office.<sup>33</sup> Although an act of 1745 opened the nomination for sheriff to "any person well qualified for the said office,"<sup>34</sup> the courts continued to confine their choices to the justices of the peace. A common procedure in some courts was for each of the justices, beginning with the junior member, to vote for three members of the commission of the peace. The clerk then returned the names of the three justices receiving the most votes to the governor.<sup>35</sup> From the names submitted by each court the governor made his appointment of a sheriff and issued a commission for a two-year term. The governor usually confined his choice to the first or the second of the three names.

The coroner, who was chosen and commissioned by the governor,<sup>36</sup> acted as an officer of the local court when the deputy marshal, or later the sheriff, was a party to a suit before the court. In this situation the coroner served the writs, summoned a trial jury, and issued execution in the usual manner.<sup>37</sup>

The clerk recorded and preserved the minutes of the actions, orders, and proceedings of the court. He issued and attested all writs and orders pertaining to the court's business. While the court was sitting, he entered each order in the minutes; read the petitions and papers submitted to the justices; administered the oaths to jurors and to persons proving deeds, wills, and the like; recorded marks, brands, and bonds; maintained the dockets; wrote and received recognizances; filed declarations, pleas, and similar papers; recorded judgments; and forwarded copies of the court's proceedings to the General Court when an action was appealed. At the conclusion of the court he submitted the minutes and dockets to the court for its approval and the signatures of the justices on the bench. Between terms he issued the orders of the previous court and the writs and orders necessary for the following court.

<sup>33</sup> S. R., XXIII, 122-124 (c. 3).

<sup>34</sup> S. R., XXIII, 217-218 (c. 2).

<sup>35</sup> New Hanover C. M., March, 1740/41; Bertie C. M., May, 1743. Also see Bertie C. M., May, 1745; May, 1747; May, 1749, in the *North Carolina Historical and Genealogical Register*, II (1901), 625, 629, 632.

<sup>36</sup> S. R., XXIII, 14 (1715, c. 11).

<sup>37</sup> Carteret Court Dockets, March, 1735/36; Carteret C. M., Sept., 1741; Narration, Jan., 1746/47; *venire facias*, April, 1747; Pasquotank Inventories of Estates and Miscellaneous Material, 1726-1881; Chowan County Papers, II, 16, 37, 50; III, 39, 45.



The secretary of the province possessed the power of appointing the county clerks by virtue of his patent entitling him to the "Office of Clerk of all the Courts in the said Province."<sup>38</sup> He issued commissions or deputations appointing clerks during his pleasure for the precinct or county courts.<sup>39</sup> At times the secretary appointed one man to the clerkship of several counties, who in turn appointed deputies to serve in each of the courts. In January, 1735/36, Nathaniel Rice, the secretary, commissioned James Craven to be the clerk of the courts of Perquimans, Chowan, and Tyrrell. In qualifying Craven, the Perquimans Court admitted him to act as clerk "by himself or Sufficient Deputy in all things belonging to the sd office."<sup>40</sup>

An act of 1740 temporarily interrupted this procedure of appointing clerks by the secretary. Under the terms of the act the governor exercised the appointive power, and he continued to appoint clerks until the disallowal of the act by royal action in January, 1742/43.<sup>41</sup> During this period the governor made his choice from the two nominations each county court submitted. After 1743 the secretary again appointed the clerks, but each county had its own particular clerk.<sup>42</sup>

Commencing in 1739 each county actually had two clerkships. The "clerk of the court"<sup>43</sup> continued to perform the duties described above as they were related to civil causes. However, the changes in the court's methods of trying lesser crimes led to the establishment of the office of "clerk of the peace" or "clerk of the crown." The duties of the clerk of the peace in criminal causes paralleled those of the clerk of the court in civil actions. Despite the division of responsibility the same person served in both capacities. In 1739 and 1740 the secretary or the governor commissioned the clerk to be both the "clerk of the county court" and the "clerk of the peace." But after 1743 the secretary's appointees

<sup>38</sup> *C. R.*, IV, 577.

<sup>39</sup> Commissions to Thomas Swann, dated Nov. 7, 1732, and to Thomas Taylor, dated March 2, 1743, Pasquotank Commissions and Orders, 1720-1789.

<sup>40</sup> Perquimans C. M., Jan., 1735/36.

<sup>41</sup> *C. R.*, IV, 620.

<sup>42</sup> In the changes in Pasquotank County, Thomas Taylor replaced James Craven as clerk in Jan., 1740/41, and Secretary Rice continued Taylor as clerk in 1744 (Pasquotank C. M., Oct., 1740; Jan. 1740/41; April, 1744).

<sup>43</sup> This office was also termed "clerk of common pleas" or "clerk of the county."

were designated simply the "clerk of the county." These clerks had authority to serve at all courts held for the county.<sup>44</sup>

The duty of the register was to record all conveyances of real estate, except mortgages, as soon as the deeds had been proved in the local court or before the chief justice. The registers of some counties also recorded births, deaths, and marriages. An act of 1715 directed the inhabitants of each precinct to elect three nominees for the office, from whom the governor and council would appoint one.<sup>45</sup> Although the justices of the Onslow Court ordered such an election as late as July, 1735,<sup>46</sup> the entire selection of registers eventually devolved upon the governor when the freeholders no longer made the nominations.<sup>47</sup> Inasmuch as the duties of this office were not arduous, the governor usually, but not always, appointed the clerk of the court to serve as register.<sup>48</sup>

While the county court was in session, there were always constables in attendance. During the court the justices assigned a constable to remain with each jury while it was deliberating and called upon the constables for any small service which might be required. The constables also returned the writs and other papers they had served, the most common of which were those of original attachment and the orders to warn the inhabitants of their districts to list their taxables. Between court terms the constables served as police officers of their districts and as executive officers of the magistrates' courts when one or two justices of the peace sat as a court for the trial of small civil actions or investigated criminal offenses. The constables also performed escort service throughout the province. Often they had to return runaway slaves to their masters or to convey persons accused of serious crimes to the pro-

<sup>44</sup> Bertie C. M., Nov., 1739; Perquimans C. M., Oct., 1739; New Hanover C. M., Sept., 1740; Craven C. M., March, 1743/44. For a clerk's commission see Thomas Taylor's dated March, 1743/44, Pasquotank Commissions and Orders, 1720-1789.

<sup>45</sup> S. R., XXIII, 49-50 (c. 38). This was essentially the same procedure authorized by the Fundamental Constitutions (*supra*, p. 7).

<sup>46</sup> Onslow C. M., July, 1735.

<sup>47</sup> C. R., VII, 488.

<sup>48</sup> In Bertie, Chowan, Craven, Pasquotank, and Perquimans the same individual held the offices of clerk and register; however, in Hyde and Onslow a justice of the peace was the register (Bertie C. M., Nov., 1739; Chowan County Papers, IV, 29; Craven Book of Grants, Wills, and Deeds, 1741-1751 *passim*; Pasquotank C. M., Oct., 1739; Perquimans C. M., April, 1735; Hyde C. M., Dec., 1749; Onslow C. M., April, 1745).

vincial prison, and occasionally they had to return a wife to her husband.<sup>49</sup>

The county court had complete authority over the constables. It determined the number needed in the county, established the bounds of their districts, and appointed and removed them as it saw fit. By law there was supposed to be an annual appointment of constables "at the first court following the first day of January."<sup>50</sup> In some counties the court observed this requirement,<sup>51</sup> but in others the date and length of appointment varied. Often the justices "continued" some of the constables in office for another year.<sup>52</sup> In Craven County constables occasionally "resigned." In so doing each man often named or nominated one to three men to the court to be his successor. The court then made its choice from these recommendations. This may have been a common procedure in the annual appointments.<sup>53</sup>

A new official of the county court in 1739 was the king's attorney. With the addition of a grand jury there was need for a prosecuting attorney. The court act of 1738/39 directed the attorney-general of the province to appoint as his deputy in each county a practicing attorney "to carry on all Proceedings in the aforesaid Courts for the Punishing the crimes." The proceedings included the preliminaries of indictment and presentment as well as the actual trial.<sup>54</sup>

At the county court lawyers represented the parties in almost all civil actions and in some criminal cases. At each court there were two or three lawyers who participated in a majority of the cases. Since the same lawyers customarily practiced in several adjoining counties, a very small group of attorneys handled most of the cases before the county courts. In order to practice in any court a lawyer had to obtain a license from the governor.<sup>55</sup>

<sup>49</sup> Onslow C. M., April, 1734; July, 1748.

<sup>50</sup> S. R., XXIII, 15-16 (1715, c. 13), 162-163 (1741, c. 5).

<sup>51</sup> Hyde, Onslow, New Hanover.

<sup>52</sup> Examples are to be found in Bertie C. M., May, 1735; Pasquotank C. M., Oct., 1745.

<sup>53</sup> Craven C. M., June, 1730; June, 1740; June, 1741; June, 1747.

<sup>54</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>55</sup> Bertie C. M., Feb., 1739/40; Craven C. M., Sept., 1742; Onslow C. M., July, 1744. An attorney who had been "regularly called to the bar in . . . the Court of King's Bench in England" did not need a license from the governor to practice in the courts (Commission of the peace dated March 6, 1738/39, Pasquotank Justices Appointed, 1728-1774).

The justices, other officers of the court, and anyone who had business to transact at the county court assembled at the courthouse on court day once every four months.<sup>56</sup> With the exception of Perquimans and Chowan, Tuesday was court day in North Carolina; the courts of Perquimans and Chowan met on a Monday and a Thursday, respectively. To accommodate the inhabitants who had business to conduct in more than one court the opening dates were arranged for different weeks in each quarter. The four oldest precincts observed the cycle, or "course" as it was called of January, April, July, and October, which had been prescribed in the Fundamental Constitutions. As new precincts had come into existence, other monthly cycles had been adopted in order to have as few courts as possible beginning on the same date.

The duration of a court term usually ranged from one to five days. As the years passed, there was a tendency for the term to be prolonged. Particularly was this true after 1739, for the courts had more criminal cases to consider. Perhaps the longest term of any precinct court was the September session of the New Hanover Court in 1740, which lasted more than three weeks. This duration, however, was most unusual. The court act of 1746 established a five-day maximum for terms. This limit included all adjournments from the authorized date for holding the court.<sup>57</sup> These adjournments were often necessary when less than three justices appeared. Under these circumstances a single justice could adjourn the court from day to day.<sup>58</sup> In some few instances the required three justices never did appear, and the actions continued over until the next quarterly court.<sup>59</sup> On rare occasions an extra term of court was held in an off month.<sup>60</sup>

<sup>56</sup> The commission of the peace for Chowan Precinct issued in 1699 called for an orphans court to be held in August in addition to the regular quarterly terms in January, April, July, and October (Chowan County Papers, I, 12). In 1703 the Perquimans Court began to operate on a schedule of seven terms a year but resumed quarterly terms after a six-month trial (Perquimans C. M., Feb., 1702/03—Oct., 1703; C. R., I, 574-582).

<sup>57</sup> S. R., XXIII, 264 (c. 2).

<sup>58</sup> In March, 1735/36, having already adjourned the Carteret Court one day, the single justice present at the courthouse in Beaufort announced that the court would be adjourned till the afternoon and then be held at James Salter's house in Beaufort. Salter was a justice who had been unable to come to the courthouse by reason of his "Indisposition." That afternoon the required three justices were present to take up the business before the court (Carteret C. M., March, 1735/36).

<sup>59</sup> Carteret C. M., Dec., 1733; June, 1734; Hyde C. M., June, 1745.

<sup>60</sup> Onslow C. M., Feb., 1733/34; Hyde C. M., May, 1749.



The attendance of the justices at court was usually the largest on the opening date of a term which followed the issuance of a "new commission of the peace." A majority of the justices in the commission was likely to appear on this occasion, for they had to requalify before they could again exercise their authority as justices. At other times the number of justices present averaged about four or five. This did not mean that only one-third of the justices were active, for during a term the personnel on the bench changed freely, although one or two justices might be present every day. Thus, even with a low attendance at any one time, approximately half of the justices could be counted as active on the court.<sup>61</sup> It is worthwhile to note that although the number of justices had doubled in a period of forty years, the attendance at court was about the same as it had been at the beginning of the century.<sup>62</sup>

The qualification of officers had precedence over other business at the beginning of a court term. Especially was this the case if a new commission of the peace had been issued, for, as has been said, the justices had to qualify to be entitled to their seats on the court bench. During the Proprietary period the governor always issued the *dedimus potestatem* to the justices of the quorum granting them the right first to qualify their associates and then to be qualified in turn by the other justices.<sup>63</sup> During the Royal period the *dedimus potestatem* was directed to the entire court so that any one or more of the justices named in the commission could administer the oaths required by law and then be qualified likewise.<sup>64</sup> The procedure at the February, 1741/42, term of the Bertie Court was typical. The commission had arrived before the opening of court. When six of the justices had assembled, the clerk read the commission. Then William Cathcart, of those present the first named in the commission, administered the oaths to the other five members. Thereupon Peter West, the second ranking justice present, administered the oaths to Cathcart. Then the six justices took their seats on the bench and proceeded to take up the business before the court.<sup>65</sup>

<sup>61</sup> This conclusion is based on the attendance for the counties of Bertie, Carteret, Chowan, Craven, and Onslow for the years from 1740 through 1745.

<sup>62</sup> Perquimans C. M., 1697-1706; C. R., I, 478 ff.

<sup>63</sup> Dedimus dated July 12, 1712, and Aug. 6, 1728, Perquimans Court Papers, 1709-1848; Carteret C. M., June, 1724.

<sup>64</sup> Dedimus dated Sept. 30, 1746, Pasquotank Commissions and Orders, 1720-1789.

<sup>65</sup> Bertie C. M., Feb., 1741/42.



The oaths which each justice took were those required of every public officer: the Oath of Allegiance to the ruling king or queen, the Oath of Supremacy as to the position of the king and the Church of England over popery, the Oath of Abjuration against any right of the Pretender to the English throne, and the Declaration against Transubstantiation, an oath commonly known as "the Test." In addition to these oaths the justice took the oath for his own office:

You shall swear, That as a Justice of the Peace in the Precinct of Perquimans, in all Articles in the commission to you directed you shall do equal Right to the Poor and to the Rich, after your cunning, Wit, and Power, and according to Law; you shall not be of Council of any person in any Quarrel depending before you and the Issues, Fines, and Amerciaments that shall happen to be made, and all Forfeitures which shall fall before you, you shall cause to be entered without any Concealment, or Imbezzeling; you shall not let for Gift, or other Causes, but well and truly you shall do your Office of Justice of the Peace, as well within your Precinct Court as without; and you shall not take any Bribe or Reward, for any Thing to be done by Virtue of your Office accustomed fees Excepted; and you shall not direct, or cause to be directed any Warrant (by you to be made) to the Parties, but you shall direct them to the Sheriff or Bailiffs of the said County, or other the King's Officers, or Ministers, or other indifferent Persons, to do Execution thereof. So help you God.<sup>66</sup>

After the qualification of justices, any other persons having new commissions or deputations from provincial officers presented their credentials to the court. These were the sheriff, clerk, register, coroner, surveyor, and king's attorney. Deputy sheriffs and deputy clerks similarly produced their deputations. After hearing the credentials read, the court officially recognized the appointments and "admitted" the individuals to their offices as soon as they had qualified.<sup>67</sup> Qualification consisted of taking the required

<sup>66</sup> Oath dated 1728, Perquimans Court Papers, 1709-1848. This is essentially the same oath authorized in *S. R.*, XXV, 287-288 (1754, c. 2).

<sup>67</sup> Except on two occasions in New Hanover, the courts seem to have admitted every appointee to office merely as a matter of course. While an act of 1740 empowered the governor to appoint clerks for the courts in each of the counties Nathaniel Rice, the secretary of the province and chairman of the New Hanover Court, appointed Samuel Bridgen as "Clerk of the Crown" for New Hanover. When Bridgen presented his commission from Rice in December 1740, a majority of the justices refused to recognize the commission and continued Governor Johnston's appointee in office. The following June the court refused another of Rice's appointments to the same office (New Hanover C. M. Dec., 1740; June, 1741).

oaths of office and, in the case of a sheriff, clerk, or register, the posting of a bond for the proper performance of duties.<sup>68</sup>

In somewhat similar fashion lawyers gained admittance to practice before the county courts. The attorneys first presented their licenses from the governor for the justices' examination. Then they took the oaths required of public officers unless they had a certificate from the chief justice of their having already qualified before him.<sup>69</sup>

Once the court opened, the justices checked the attendance of its other officers. The constables were the most frequent absentees. In Onslow a roll call of constables was a part of the regular opening procedure.<sup>70</sup> The justices of Onslow and other counties occasionally levied amercements or fines on absent constables and ordered them to appear the following term to show cause for their neglect.<sup>71</sup> When the clerk or the king's attorney was absent, the court normally appointed someone to act in his stead for the term. In Craven County the justices swore in James Coor as clerk during the September session of 1745. The Onslow Court appointed William Harrison to serve in the absence of the king's attorney in October, 1747.<sup>72</sup> A court also made a temporary appointment if a vacancy existed in any of the offices. When Benjamin Hill resigned as the clerk of Bertie County, the justices appointed Thomas Crew to serve until the governor made a new appointment.<sup>73</sup>

The courts usually preferred to impanel their juries before proceeding to other business. During the interval between court

<sup>68</sup> By law the minimum bond of a sheriff was set as £500, sterling (*S. R.*, XXIII, 123 [1738, c. 3]; Chowan C. M., April, 1741). The bond of a register was £1000, current money (*S. R.*, XXIII, 50 [1715, c. 38]; Pasquotank C. M., Jan., 1739/40). For at least a decade prior to 1740 the bond of a clerk was £500, current money (Carteret C. M., Sept., 1731; Pasquotank C. M., Oct., 1737; Jan., 1739/40). After that date it varied from £200 to £1000, proclamation money (Pasquotank C. M., April, 1744; Craven C. M., June, 1744; Hyde C. M., Sept., 1744).

<sup>69</sup> Bertie C. M., Feb., 1739/40; Craven C. M., Sept., 1742; Pasquotank C. M., Jan., 1742/43.

<sup>70</sup> Onslow C. M., 1742-1749, *passim*.

<sup>71</sup> Onslow C. M., April, 1742; July, 1743; Oct., 1745; New Hanover C. M., Dec., 1740; Craven C. M., Dec., 1747; Hyde C. M., Dec., 1747; Chowan C. M., July, 1748; Carteret C. M., Sept., 1750.

<sup>72</sup> Craven C. M., Sept., 1745; Onslow C. M., Oct., 1747. In July, 1748, the Onslow Court appointed its clerk to act as the king's attorney (Onslow C. M., July, 1748). The Carteret Court continued its crown cases rather than appoint an acting attorney (Carteret C. M., Sept., 1743; Jan., 1743/44; June, 1746).

<sup>73</sup> Bertie C. M., May, 1742. Also see Onslow C. M., July, 1747.

terms the clerk issued writs to the sheriff to summon "Twenty four good & Lawfull men freeholders of the County" to appear at the next court to serve on the grand jury and a like number to serve on the petit jury.<sup>74</sup> At the court's order the sheriff returned these writs of *venire facias* and attached the names of the men he had summoned. The clerk then called the list and recorded the names of those in attendance. Absentees were fined, but they were permitted to appear the next court to explain their absences. If their excuses were acceptable, the courts remitted their fines.<sup>75</sup> Unless at least twelve men appeared for each jury, the court directed the sheriff to summon enough men from the bystanders to complete the jury.<sup>76</sup> A court normally impaneled its grand jury first. The clerk administered the oath to the members of the grand jury, the foreman, and then the others. The ranking justice on the bench charged the jury. Following this, the grand jurors withdrew, accompanied by a constable, to consider the bills of accusation that the king's attorney preferred and the other information made known to them. At this time, or later when the need arose, the court impaneled petit juries in similar fashion. Occasionally one petit jury tried several, if not all, of the cases tried during a term, provided the membership of the jury was acceptable to the litigants concerned.<sup>77</sup>

After the grand jury withdrew, the clerk proceeded to read over the crown and civil dockets. The justices made such orders as were appropriate and brought the cases to trial if the parties were ready. When a court was unable to consider all of the actions on its dockets, the justices continued the remaining cases until the next court.<sup>78</sup> In several counties unusual circumstances led to the continuance of all the actions on the dockets. There were no jurors available for the January, 1731/32, term of the Chowan Court.<sup>79</sup>

<sup>74</sup> Chowan County Papers, II, III, IV, *passim*; Perquimans Court Papers, 1709-1848. Prior to 1739 the precinct courts issued writs to summon men for only the petit juries. The writs were directed to the marshal or his deputy. For an early writ, see the one dated April, 1734, Pasquotank Summons, 1729-1750.

<sup>75</sup> There are few references to fines for absent jurors in the extant court records for the years before 1739. For an example, see Pasquotank C. M., July, 1734. After 1739 all of the courts levied fines frequently.

<sup>76</sup> Chowan C. M., July, 1742; Chowan County Papers, II, 49.

<sup>77</sup> Perquimans C. M., Jan., 1739/40; Onslow C. M., 1746, *passim*.

<sup>78</sup> Bertie C. M., May, 1742; May, 1743; Onslow C. M., April, 1743; Chowan C. M., April, 1750.

<sup>79</sup> Chowan C. M., Jan., 1731/32.

and several times all the attorneys who practiced in a court were absent.<sup>80</sup> While permitting the continuance of the cases because of the attorneys' absences, the justices of Carteret served notice that they would not make a similar allowance in the future without sufficient reason being given.<sup>81</sup>

Without a law to specify a definite procedure for the county court the justices generally arranged matters to suit themselves and the people in attendance. The order of business at the October, 1741, term of the Chowan Court reveals the variety of items on a court's dockets and the manner in which the justices shifted rapidly from one subject to another. The session began in the morning of the prescribed third Thursday in October. Justices John Hodgson, John Alston, Thomas Luten, Abraham Blackall, and Jacob Butler were present. The court summoned the grand jurors, had them duly sworn and charged, and then ordered them to withdraw. During the remainder of this first session the court concerned itself with the following: eleven deeds of sale were proved and each ordered to be recorded; an inventory of one estate and the division of another were exhibited and ordered recorded; and the clerk, James Craven, was appointed the overseer of the roads in Edenton. Thereupon, the court adjourned until three o'clock. During the afternoon the court completed only two items: the proving of a deed and the appointment of a road overseer.<sup>82</sup>

When the court reconvened at ten o'clock Friday morning, the grand jury appeared and returned four bills. The justices then heard and granted Thomas Kimsey's petition for a license to operate an ordinary. Although the minutes for this morning session list only these transactions before the adjournment to three o'clock, it is quite possible that the court had already impaneled a petit jury and had begun hearings on the actions which were concluded during the afternoon.

During the Friday afternoon session the court seemed anxious to conclude as much business as possible so as not to prolong the term. Judgments were given in two civil suits and in one criminal action. The latter had not come to trial, for the defendant had

<sup>80</sup> Pasquotank C. M., July, 1742; Carteret C. M., March, 1736/37; Craven C. M., Dec., 1737. The Bertie Court continued the cases of one attorney upon his absence (C. M., Aug., 1739).

<sup>81</sup> Carteret C. M., March, 1736/37.

<sup>82</sup> Chowan C. M., Oct., 1741. The following two paragraphs are based upon the minutes of the same term.



submitted to the mercy of the court. The court quashed one presentment and discontinued or dismissed four civil actions. In addition to these cases, James Wallace, Jr., secured the administration of his father's estate; two men declared the number in their families who were subject to the poll tax; the court heard but rejected Samuel Gregory's request for a license to operate an ordinary; the justices bound out two orphan girls and made a temporary disposition of an orphan boy; the inventories of two estates were exhibited and recorded; and the sheriff reported the amount obtained by the sale of a slave belonging to the estate of the late Charles McDowall. Before concluding the fall term the court appointed an inspector for each of the county's two warehouses to which people brought the commodities for the payment of taxes, set the inspectors' salaries, and ordered the levying of a sixpence-proclamation-money poll tax to cover the expenses of the county for the year. The court then adjourned until "the next in course," the January term. The five justices present signed and attested the minutes.

Although the procedure of the Chowan Court at this term was typical of that of the majority of other county courts, the justices of Craven County endeavored to establish a more systematic calendar on at least two occasions. In June, 1730, they ordered that only on "ye first Day of Court Sitting any person or persons hath Any Business by motion or Petition then shall bee heard and ye Last day of court Sitteing."<sup>83</sup> Later, in December, 1739, after the creation of the office of king's attorney, the justices ordered that all pleas for the Crown should begin on the Wednesday following the sitting of the court. The effect of this second rule was the separation of the court's activities into two divisions—the suits of the king and the affairs of the inhabitants. Common usage applied the terms of "Court of Quarter Sessions" to the former and "Court of Common Pleas" to the latter. The same justices composed both courts. By frequent adjournments they shifted from the business of one court to that of the other. The minutes of the court indicate that the Craven Court maintained this definite distinction for several years.<sup>84</sup> Such a division of a court's activities appears less distinctly in the records of other counties.<sup>85</sup>

<sup>83</sup> Craven C. M., June, 1730.

<sup>84</sup> Craven C. M., 1739-1743.

<sup>85</sup> Perquimans C. M., July, Oct. 1740; Chowan County Papers, II, *passim*; Hyde County Miscellaneous Papers, *passim*.



Before the laws were printed in 1752, the justices of a county court often had the clerk read publicly a few of the laws at some point during certain court terms. The acts pertaining to Sunday observance,<sup>86</sup> servants and slaves,<sup>87</sup> and the prevention of cattle and hog stealing,<sup>88</sup> contained requirements that they should be read publicly twice a year either at divine service or at the local court.<sup>89</sup> The minutes reveal that many of the courts had these and all other new laws read in open court at the first term after they received their handwritten copies from the provincial secretary,<sup>90</sup> but there are few indications that the clerks read these laws regularly at the required intervals.<sup>91</sup>

The final action of each court prior to adjournment was the reading and examination by the justices of the clerk's records for the term. These records included not only the minutes but also the dockets, wills, deeds, and other instruments of writing proved in court. The justices present on the bench then signed the different records to authenticate and affirm their actions and orders.<sup>92</sup> -- If this action were not taken, as was the case at the August, 1741, term of the Bertie Court, the work of the court did not have to be repeated. The justices of that court at the next term merely ordered that "all orders passed last Court be affirmed of this Court."<sup>93</sup>

When court adjourned, the justices were not free of the responsibilities of their office. While at home they were expected to be accessible to all who might need the protection of life and property which the government furnished. The sheriff and constables were at their command. Steps could usually be taken to deal adequately with a problem until the next court. Moreover,

<sup>86</sup> S. R., XXIII, 6 (1715, c. 7), 175 (1741, c. 14).

<sup>87</sup> S. R., XXIII, 66 (1715, c. 46), 204 (1741, c. 24).

<sup>88</sup> S. R., XXIII, 167 (1741, c. 8).

<sup>89</sup> Both acts of 1715 were to be read by the minister, if one were in the parish, otherwise by the clerk of the court. In 1741 the reading of the act pertaining to Sunday observance was limited to the minister or the parish clerk, and the court clerk was to read the other two.

<sup>90</sup> Craven C. M., Sept., 1740; Sept., 1741; June, 1743; New Hanover C. M., June, 1741; Onslow C. M., July, 1743; Jan., 1748/49.

<sup>91</sup> The clerk of Onslow read the two acts of 1741 in April, 1742, according to law (Onslow C. M., April, 1742). Likewise, the minutes of the Craven Court record that the act pertaining to cattle was read in June, 1748.

<sup>92</sup> New Hanover C. M., March, 1740/41; June, 1741; Pasquotank C. M., Oct., 1737; Perquimans C. M., July, 1735; Jan., 1735/36.

<sup>93</sup> Bertie C. M., Aug., Nov., 1741.

between courts the justices had opportunity to observe the general needs of the county which they could meet when assembled as its governing body. Therefore, whether as judges in such matters as civil and criminal actions or as administrators of the county's buildings and finances, the justices were able to approach their work with a personal understanding and appreciation of the aspects involved.

## C H A P T E R   I I I

# Jurisdiction of the Court

## Criminal and Civil Actions

The county court and its predecessor the precinct court both exercised some jurisdiction over criminal and civil causes. During the first half of the eighteenth century the authority of the justices of the peace at their quarterly courts was limited to the determination of offenses for which there was no capital punishment and of civil actions in which the amount demanded did not exceed a maximum that ranged from fifty to one hundred and fifty pounds, current money. Although jury trials were common for civil cases throughout this period, they were not common in criminal cases until 1739. Prior to that time the justices handled criminal offenses in a summary manner. Thereafter the county court began to summon a grand jury and to have their criminal cases tried before a jury by a public prosecutor.

Prior to 1739 the commission of the peace did not always specify the court's authority to exercise criminal jurisdiction. Although a commission of the peace of 1702/03 empowered the Perquimans Court "to try by a Jury of twelve true & Lawfull men all Petty larcenies all unlawfull riotts and routes" in its precinct,<sup>1</sup> the commissions of the peace issued in 1720 and 1724 omitted such authority.<sup>2</sup> In a description of the powers of the precinct court in 1731 Governor Burrington's reference to the court's right to require recognizances or bonds for good behavior was his only intimation that the court might have any power over criminal offenses.<sup>3</sup> The

<sup>1</sup> Perquimans C. M., Feb., 1702/03; *C. R.*, I, 574-575.

<sup>2</sup> Commissions dated Nov. 18, 1720, April 17, 1724, and Oct. 28, 1724, Pasquotank Commissions and Orders, 1720-1789; Chowan County Papers, I, 73.

<sup>3</sup> *C. R.*, III, 150.

act of March, 1738/39, even asserted that as the county courts have "no Jurisdiction or Authority to enquire of hear and Determine any Breach of the Peace or any criminal cause matter whatsoever . . . Divers Petit Larcenies and other Misdemeanors have Pass'd over with Impunity."<sup>4</sup>

Despite any definite authority the precinct courts heard and determined quite a variety of offenses during the years from 1735 to 1739. Charges of fornication, adultery, assaults, and breach of the peace were the most common.<sup>5</sup> Occasionally a court levied a fine for selling liquor illegally, for swearing,<sup>6</sup> or for breaking the Sabbath.<sup>7</sup> In October, 1732, Sarah Wiggans appeared before the Onslow Court on the charge of stealing "part of a pair of silver shoe Clasps." When she confessed, the court ordered that she receive "five lashes well laid on her bare back by the Constable."

Until the enactment of the court law of 1738/39, the cases which came before the precinct court had to originate with the complainant and information presented to the justices at court or between terms. The court act passed in March, 1738/39, remedied the lack of a grand jury and definitely established the criminal jurisdiction of the county courts. The law empowered the courts:

to enquire of hear and Determine all Petit Larcencys, Assaults [sic], Battery, Breaches of the Peace and Behaviour, and all Misdemeanors and Crimes of an Inferior Nature (forgery Perjury and Mayhem excepted) by Indictment or Presentment and to award Venires to Sumon freeholders to serve as Grand and Petit Jurors and to give Judgement and award Execution agreeable to the Method and Practice of the Justices of the Quarter Sessions in their respective Countys in England.<sup>9</sup>

<sup>4</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>5</sup> Carteret C. M., June, Sept., Dec., 1736; Sept., 1737; Onslow C. M., Jan. 1733/34, April, 1735; Pasquotank C. M., Oct., 1737.

<sup>6</sup> Bertie C. M., Feb., 1736/37; Perquimans C. M., July, 1735.

<sup>7</sup> Onslow C. M., Jan., 1735/36; Craven C. M., March, 1743/44.

<sup>8</sup> Onslow C. M., Oct., 1732, Bath County Records, Southern Historical Collection, University of North Carolina, Chapel Hill, N. C.

<sup>9</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O. Essentially the same power was contained in the court act of 1746, except mayhem was not included among the exceptions (S. R., XXIII, 263 [c. 2]). The offenses of an "Inferior Nature" were ones for which capital punishment was not prescribed. For a contemporary description of offenses and punishments and for a general account of Court of Quarter Sessions, see Thomas Wood, *An Institute of the Laws of England; or, The Laws of England in their Natural Order, according*

The act became effective immediately. At the April term of Chowan Court the grand jury returned presentments against five men of the county for living promiscuously with women who were not their wives. The charge against three of these men was expressed as "keeping a Woman to the Great Discontent of his Wife." In July the grand jury presented five other Chowan men. Two of these presentments were "for Liveing in adultery," and each of the remaining three were "for being a common swearer."<sup>10</sup>

A presentment was one of three methods by which a court began prosecution for a breach of the criminal law. The other methods were indictment and "information."

An indictment was a formal, written accusation against one or more persons of a crime or misdemeanor which the king's attorney proffered to the members of the grand jury for their consideration. The indictment specified the accused's name, his rank or occupation,<sup>11</sup> the town and county of his residence, the date and place of the offense, and a description of the general nature of the offense. The king's attorney obtained the information for the indictment from the records of the prisoner's examination before a justice, which the justice had forwarded or brought to court. If at least twelve members of the grand jury agreed in their deliberation that the evidence was sufficient to support the charge in the indictment, the grand jury returned the indictment to the court as a "true bill." A prosecution of the case then followed. When less than twelve grand jurors sustained the charge, the jury returned the accusation as "ignoramus," and the accused was released.<sup>12</sup>

A presentment was an accusation made by members of the grand jury which was based upon their personal knowledge or upon the information they obtained from persons who appeared before them while they were deliberating. The person accused in a presentment had not appeared before a justice. As with an indictment, at least twelve members of the grand jury had to support the charge

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*Common Use* (4th ed.; London, 1728), pp. 395-445, 480-483. Wood's work was one of the law books which the county courts were authorized to purchase with county funds in 1749/50 (*S. R.*, XXIII, 346 [c. 4]).

<sup>10</sup> Chowan County Papers, II, 46-48, 65-67.

<sup>11</sup> Such as "Esquire," "Gentleman," "Planter," or "Spinster."

<sup>12</sup> Chowan County Papers, III, 7, 33; Chowan C. M., Jan., 1743/44; indictment against Francis Layden, Jan., 1747/48, Perquimans Court Papers, 1709-1848.



of a presentment for it to be returned to the court for prosecution.<sup>13</sup> When a grand jury returned a presentment, the charge was then reduced into the form of an indictment.<sup>14</sup>

Grand juries occasionally returned presentments against common nuisances. In March, 1740/41, a New Hanover jury presented two of the county roads as "not being Sufficient for Travelers to pass & repass."<sup>15</sup> The following June the grand jurors found "That the gaol in Wilmington stands in an Improper place and yt the Excrements and other neausances dayly coming out of it is a very great nusance to the Inhabitants thereabouts & other."<sup>16</sup>

An information was the accusation of one person against another for an offense the latter allegedly committed. The court could act upon the charge without a grand jury considering the accusation. The informer (not identical with an informer under a criminal statute) usually made his charge for misdemeanors for which the offender was liable to pay a fine, a part of which he could claim as the informer. A court sometimes proceeded against persons accused of assault and battery upon the information of the injured parties.<sup>17</sup>

The proceedings against Alexander Haughton in the Chowan Court illustrate the procedure of a criminal case after a grand jury made its return. At the January, 1743/44, term the jury presented two indictments against Haughton for felony. As soon as the court adjourned, Richard McClure, as clerk of the peace, issued a writ of *capias* for the sheriff to cause Haughton to appear at the next "Quarter Sessions." The writ also directed the sheriff to summon four witnesses as "Evidences for the King." Peter Payne, the

<sup>13</sup> A New Hanover grand jury took an exception to this requirement in presenting Abel Johnson "for working constantly on the Lords Day." They were careful to note, however, that "This Last presentment [Johnson's] was carried Eight yeas agt Five nays." The purpose of returning this presentment, which lacked the necessary twelve votes, may have been to have it serve as "an information" upon which the court could proceed against Johnson (New Hanover C. M., March, 1740/41).

<sup>14</sup> Chowan County Papers, II, 46-48, 65-67, 73, 75, 76.

<sup>15</sup> New Hanover C. M., March, 1740/41. Although the minutes of the New Hanover Court do not reveal whether a suit followed this presentment, a presentment at the Carteret Court led to a prosecution. The king's suit against the commissioners of the road from Beaufort to the Neuse River resulted in their being fined one shilling (Carteret Court Dockets, June, 1750). Also see Chowan County Papers, V, 9.

<sup>16</sup> New Hanover C. M., June, 1741. The New Hanover Court quashed this last presentment at the September term for lack of a prosecutor.

<sup>17</sup> Carteret C. M., Sept., 1737; Bertie C. M., May, 1739.

sheriff, executed the writ and summoned two of the witnesses. Haughton appeared before Jacob Butler, a justice of the peace, on March 22 and gave bond of twenty pounds for his appearance at the next court. Two of his brothers were the securities for his bond.<sup>18</sup>

At the April court Haughton appeared and was arraigned on two counts: for stealing honey from Thomas Pierce and from Cornelius Berry. Haughton took exception to each of the indictments, but the court overruled the exceptions. Then Haughton pled "not guilty" in each of the cases. As the cases were not to come to trial until the July term, the court required Haughton to post a new bond and set the amount at thirty pounds. Haughton complied and had his brothers sign as sureties. In July the case of Haughton's stealing from Pierce came to trial. A jury was impaneled, heard the evidence, and returned a verdict of "guilty." The defendant moved for an arrest in judgment, again attacking the indictment. The reasons for an arrest were argued, but the court held the indictment to be good in all of its parts. The justices then ordered and adjudged that Haughton should receive ten lashes on his bare back. Ordinarily an order for the execution of judgment would have followed, but the court continued the case. In January, 1745/46, a *certiorari* from the General Court removed both cases from the jurisdiction of the Chowan Court and brought them before the higher court.<sup>19</sup>

Although the Chowan records do not indicate that Haughton had any witnesses summoned on his own behalf, some defendants had the clerk summon defense witnesses. In a criminal suit against Mary Long three men were summoned:

to Testifie all and Singular those things which they and Each of them Shall know in a Certain Prosecution Pending undertermined Wherein we the Crown are the Pltf and Mary Long Deft on the Part & behalf of the Deft and to be tryed on the 2nd Day of the Said Court & this they are in no wise to Omit under Penalty of one hundred Pounds Each.<sup>20</sup>

Despite the heavy penalty for nonappearance, the Onslow Court imposed a fine of only two shillings six pence, proclamation money,

<sup>18</sup> Chowan County Papers, III, 41.

<sup>19</sup> Chowan C. M., April, July, 1744; Jan. 1744/45.

<sup>20</sup> Chowan County Papers, IV, 14; also see summons dated Dec. 11, 1744, Bertie County Miscellaneous Papers.

and fees on William Marchment for failing to attend as evidence for the king in a suit against John Hicks.<sup>21</sup>

The defendant often succeeded in obtaining an acquittal. In each of the nine cases tried in Craven County during June, 1741, the jury returned a verdict of "not guilty."<sup>22</sup> This percentage was unusually high, but acquittals were frequent in other counties. Although the extant court records do not contain sufficient evidence to explain the frequency of the acquittals, the minutes of Craven and Onslow counties in 1743 indicate that in at least two instances they were not due to negligence on the part of the king's attorney. During the June session the king's attorney moved that the Craven Court should set aside the verdict of "not guilty" in the suit against Joshua Johnson "by reason of the foreman not keeping with his fellows."<sup>23</sup> In October of that year the king's attorney for Onslow County made a similar motion to the court in the case against Nathaniel Averett on the grounds that the verdict of "not guilty" was contrary to the evidence. The Onslow Court granted the motion and gave orders for a new jury at the next term.<sup>24</sup>

Nothing in the records of the Onslow Court indicates that the justices of the court were concerned with the fact that their action in the above case was throwing Averett into double jeopardy, nor did they take any action against the jurymen who had failed to live up to their oaths. If the defendant had had a capable defense attorney, he might have obtained justice, but only rarely did a defendant have an attorney in a criminal case. Fortunately the action of the court in this case seems to have been an isolated incident, for the records of this and other courts do not duplicate such presumed illegality.

When a trial jury found a defendant "not guilty," the court discharged the accused by a proclamation made by the sheriff or his crier. The Craven Court held its defendants until the last day of the court term. Thus, though Rice Price and James Durham were found to be not guilty of the charges against them on a Wednesday, the court did not discharge them until Saturday, the day court adjourned.<sup>25</sup>

<sup>21</sup> Onslow C. M., July, 1742.

<sup>22</sup> Craven C. M., June, 1741. The charges in these cases are not recorded.

<sup>23</sup> Craven C. M., June, 1743.

<sup>24</sup> Onslow C. M., Oct., 1743.

<sup>25</sup> Craven C. M., March, 1739/40.

Even when a defendant obtained an acquittal, he was often subjected to one of the evils of the day: the payment of the cost of his trial. As the officers were anxious to collect their fees, some, if not most, of the courts were not averse to making the innocent person pay. Although the Assembly passed a resolution in November, 1744, declaring the practice "A Grievance,"<sup>26</sup> the evil was not completely eradicated. The Craven Court assessed James Salter the costs of his prosecution in June, 1748, after a jury returned a verdict of "not guilty."<sup>27</sup>

The technical wording of an indictment or presentment sometimes delayed justice. The proceedings in the Perquimans Court against William Barker, a planter, on the charges of adultery and fornication illustrate this difficulty. The Perquimans "Grand Inquest," as the grand jury was commonly termed, presented Barker in October, 1739, for living in an adulterous manner with Eliza Braizer, a widow, and having two children by her. On his arraignment at the next court Barker pled "not guilty" and asked for a jury trial in April. The king's attorney agreed. By April Barker had other plans. At that court he withdrew his plea and took exception to the presentment on the grounds that as he was not married he could not have committed adultery. The matter was "fully argued." Finally, the court ordered that the presentment be quashed and that Barker be discharged upon paying costs. This action by the court led to a new presentment. In July the grand jury charged Barker and Eliza Braizer "for continuing to live in fornication and having two children." Again Barker pled "not guilty," as did Eliza. The trial jury, however, returned a verdict of "guilty," and the court fined each one shilling, proclamation money, and costs. This fine was considerably less than the twenty-five shillings prescribed by law.<sup>28</sup>

<sup>26</sup> C. R., IV, 745.

<sup>27</sup> Craven Court Dockets, June, 1748. Persons accused of offenses but not indicted by the grand jury might also be required to pay fees to be discharged (Perquimans C. M., April, 1739; Craven C. M., Dec., 1743). When a Hyde County grand jury decided in 1748 that Patrick Gooding's charges against Thomas Lawther were insufficient to return a presentment, the court discharged Lawther and ordered Gooding to pay the costs (order dated June 7, 1748, Hyde County Miscellaneous Papers).

<sup>28</sup> Perquimans C. M., April, Oct., 1740. Other courts normally levied the required fines (Bertie County Miscellaneous Papers, *passim*; Carteret Court Dockets, June, 1742, June, 1743; Pasquotank C. M., Jan., 1739/40).



In contrast to the delay which accompanied the prosecution of an indictment or presentment, a court usually held summary hearings for persons accused of misdemeanors by informers. John Bryan informed the Craven Court in March, 1743/44, of a trio of men who had played Bandy Wicket, a form of Cricket, on the Sabbath. Since the testimony of Dennis Sherlock, the "under-sheriff," supported the charge, the court fined each of the three men ten shillings, proclamation money. During the same term the Craven Court imposed a two-shilling fine of like money on William Dean for being drunk when he appeared in court.<sup>29</sup>

When cases of assault were on the court docket, the justices were usually lenient in their judgment of defendants who submitted to the mercy of the court or made amends to the injured party. In 1737 Edward Anderson complained to the Carteret Court of the beating he had suffered at the hands of Thomas Hambling and Matthew Green. The justices ordered the two accused men to appear in court. After a hearing, the court placed the defendants in the marshal's custody until they gave security for their good behavior for a year and a day. However, just before court adjourned, Hambling and Green came before the justices and offered their "humble submission." This satisfied the court, and the justices excused the two men of their bonds.<sup>30</sup> In a case before the Perquimans Court in October, 1740, Caleb Calloway pled "not guilty" to a charge of having assaulted John Jones. When the jury found him "guilty," he obtained an arrest of judgment. At this same court Calloway was charged with an assault against Richard Harding. During the vacation of court Calloway seems to have satisfied his victims. In January he came into court with his wife, withdrew his plea of "not guilty," and submitted to the mercy of the court. The justices imposed a fine of only one shilling, proclamation, and costs in each of the two cases.<sup>31</sup>

Since sufficient records are lacking to determine the frequency of each type of offense tried by the county courts, the Crown, or criminal, docket for the November, 1743, term of the Bertie County

<sup>29</sup> Craven C. M., March, 1743/44. For other instances of the summary trial of misdemeanors including Sabbath breaking, drunkenness, profane swearing, failure to work on public roads, and selling liquor without a license, see Perquimans C. M., July, 1735; Onslow C. M., Jan., 1735/36; Bertie C. M., Feb., 1736/37; Chowan C. M., July, 1742; Craven C. M., Dec., 1744; execution dated Sept. 14, 1741, Pasquotank Executions, 1729-1755.

<sup>30</sup> Carteret C. M., Sept., 1737.

<sup>31</sup> Perquimans C. M., July, 1740-Jan., 1740/41.



Court is useful for the details it contains concerning the origin and nature of the causes before that court. The docket consisted of twenty-eight cases. Five originated from indictments for assault; two from indictments for trespass; ten from presentments for fornication or adultery; one from a presentment for swearing; and ten were recognizances which persons had posted for their good behavior. This docket with its variety of cases seems to have been typical of the business before other courts.<sup>32</sup>

As the county courts had determined cases of assault, adultery, fornication, petty larceny, and swearing before 1739, the cases before the Bertie Court in 1743 indicate that the court act of 1738/39 made fewer changes in the court's jurisdiction than it did in the court's procedure. Beginning in 1739 indictments and presentments had largely supplanted the informer as the means of preferring charges against the defendant, and jury trials replaced summary hearings for many offenses.

The major change in the county court's civil jurisdiction during the first half of the eighteenth century was in the amount of the debt or damages of suits which it could determine. In 1702/03 the Perquimans Court had the authority to "heare and determine all Psonal actions not exceeding the Summe of fifty pounds."<sup>33</sup> A commission of the peace issued in 1720 retained the same maximum but prescribed a jurisdiction over "all Actions Suits and Causes Whatsoever Real, Mixed, Personal, or any other kind or Nature whatsoever."<sup>34</sup> This authorization included all actions under common law, statutory law, and equity which did not exceed fifty pounds. Before the end of the Proprietary period the precinct courts were authorized to determine actions for amounts up to one hundred pounds. Although only the title of the 1727 act has been preserved,<sup>35</sup> court papers indicate that this jurisdiction was in effect until Governor Burrington came into office and issued new

<sup>32</sup> Bertie Court Dockets, Nov., 1743.

<sup>33</sup> Commission of the peace dated Jan. 16, 1702/03, Perquimans C. M., Feb., 1702/03; *C. R.*, I, 575.

<sup>34</sup> Pasquotank Commissions and Orders, 1720-1789. A real action is a suit brought to obtain possession of land from which the plaintiff has been ousted or to which he is denied access. The action is a mixed one if the plaintiff demands damages for the deprivation of the land as well as its possession. A personal action is one brought to recover damages for the violation of some legal right or to recover possession of personal property.

<sup>35</sup> "An Act for Enlarging and Confirming the Power of the Precinct Courts, and to prevent Actions and Indictments, of small Value, being Brought in the General Court," *S. R.*, XXIII, 111 (c. 6).

commissions of the peace in 1731. Burrington re-established fifty pounds as the maximum.<sup>36</sup> After unsuccessful attempts to increase the jurisdiction of the precinct courts in 1731, 1733, and 1734/35,<sup>37</sup> the Assembly enacted the court law of 1738/39. Under this act the courts could hear and determine all personal actions in which the debt or damages did not exceed one hundred pounds.<sup>38</sup> This increased maximum was intended to offset, to some extent, the effects of the currency inflation. The act of 1746 made another increase in the maximum of the actions determinable in the county court. On the exchange basis of seven and a half to one, the new ceiling of twenty pounds, proclamation money, was a 50-per-cent increase over the old limit of one hundred pounds, current money. This act also continued to limit the court's civil jurisdiction to personal actions.<sup>39</sup>

The county courts observed the maximum ceiling of their jurisdiction specified in the commissions of the peace and in the respective laws.<sup>40</sup> Upon Governor Burrington's re-establishment of fifty pounds as the maximum in 1731, the justices of the Carteret Court dismissed John Shackelford's suit against Jabez Shurtliff on the grounds that their commission gave them no cognizance of suits for sums exceeding fifty pounds.<sup>41</sup> Because of this maximum, John Cox set the damages he sought from Nicholas Islancher at

<sup>36</sup> C. R., III, 150. A declaration in the case of *Spellman v. Stoakley* at the October, 1729, term of the Pasquotank Court asks for damages of ninety pounds. A writ to the marshal dated June 10, 1731, in the case of *Lowder v. Luffman* mentions the damages sought as one hundred pounds (Pasquotank Warrants for Arrests, 1720-1740). As Burrington and his council issued the new commissions in 1731, the Carteret Court dismissed the suit of *Shackelford v. Shurtliff* because the plaintiff sought damages in excess of fifty pounds (Carteret C. M., Sept., 1731).

<sup>37</sup> C. R., III, 325, 611; IV, 126.

<sup>38</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>39</sup> S. R., XXIII, 263 (c. 2).

<sup>40</sup> The earliest extant laws specifying the amounts of civil suits determinable by the county courts are those of 1738/39 and 1746. The commissions of the peace issued while these laws were in effect conformed to the maximum of each (Pasquotank Commissions and Orders, 1720-1789). Julian P. Boyd's statement that the courts were lax in observing the maximum seems to have arisen from his not knowing the details of the act of 1738/39. He gives no definite citation for his charge that the Perquimans Court issued an attachment for £70, proclamation money, in 1748 (Boyd, "The County Court in Colonial North Carolina" [M. A. Thesis, 1926, Duke University], p. 26).

<sup>41</sup> Carteret C. M., Sept., 1731.

the figure of £49 19s.<sup>42</sup> Sometimes, however, the plaintiff sought the full fifty pounds. After the passage of the act of March, 1738/39, plaintiffs increased the amounts of the damages they asked. One of the first instances was the action Samuel Sinclear, Esq., initiated on April 3, 1739, against Thomas Toye for damages of one hundred pounds.<sup>43</sup> Although a Craven jury might seem to have exceeded the legal ceiling in rendering a verdict of £100 16s. for Thomas Haday in 1741/42, the sum would be expected to include the costs, as they were not mentioned separately.<sup>44</sup> Another large judgment was the Onslow Court's award of a hundred pounds and costs to John Mayson in 1744.<sup>45</sup> Following the act of 1746, the amounts in actions were usually stated in terms of proclamation money; however, the amounts were expressed sometimes in "bills late tenor," in sterling, and, particularly in the northern counties, in Virginia currency.

The General Court apparently had concurrent jurisdiction with the county courts in most civil actions, although existing records fail to define clearly the authority of the General Court in this respect before 1739. An act of 1715 forbade inhabitants of Bath County from bringing suits in the General Court against one another for less than ten pounds.<sup>46</sup> The court act of 1738/39 prohibited anyone suing in the General Court for a debt that was under twenty pounds, current money, unless the case was moved to the court by an appeal or writ of error. If both parties to an action lived in the same county, the minimum was twenty-five pounds.<sup>47</sup> The court act of 1746 prescribed that "no Suit shall be brought to the General Court for a less Sum than Five Pounds, Proclamation Money, unless the Plaintiff and Defendant live in different Counties."<sup>48</sup> These regulations suggest that the civil actions for small amounts with which the General Court was concerned were chiefly the cases in which the plaintiff and defendant lived in separate counties.

The county court itself served as the court of appeal for cases tried in magistrates' courts. An act of 1715 for "the Tryal of

<sup>42</sup> Onslow C. M., Jan., 1734/35.

<sup>43</sup> Writ, Hyde County Miscellaneous Papers.

<sup>44</sup> Craven C. M., March, 1741/42.

<sup>45</sup> Onslow C. M., July, 1744.

<sup>46</sup> S. R., XXIII, 26-27 (c. 23).

<sup>47</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>48</sup> S. R., XXIII, 263 (c. 2).

Small & Mean Causes" provided that any two or more justices of the peace, one of whom was of the quorum,<sup>49</sup> had jurisdiction "to Examine, Hear, Trye, Adjudge & finally Determine all Complaint & Action of Debts or Demands" not exceeding forty shillings according to justice and equity. Suits for such small amounts were "Issuable, Tryable & Determinable" only before the magistrates' courts.<sup>50</sup> A single justice of the peace had similar powers in actions for debts not exceeding twenty shillings.<sup>51</sup> An act of 1729 granted either party of a suit the right to appeal the judgment to the precinct court after giving sufficient security that the appeal would be prosecuted.<sup>52</sup> Once the appeal reached the precinct or county court, a jury usually tried the appeal; however, the parties occasionally preferred to refer their case to arbitrators.<sup>53</sup> The defendant in the action before the magistrates' court was the party who normally made the appeal, if any; but he was seldom able to win a favorable decision. With few exceptions the juries, by returning findings for the appellees, sustained the judgments of the lower courts.<sup>54</sup>

The most common type of civil suit brought before the county court was the action of "trespass on the case," often referred to

<sup>49</sup> Even though the law permitted three or more justices to hold a magistrates' court, two justices were the most to serve together in such a court. The reason was that two justices had as much authority in a magistrates' court held during the court's vacation as any larger number did.

<sup>50</sup> The act likewise ordered that any plaintiff having a verdict in the higher courts for less than forty shillings would have to pay the cost of his suit except in actions of trespass and actions of defamation. For this reason Daniel Rodes, the defendant, was excused the costs of a suit he lost to Alexander Jack in the Pasquotank Court (Pasquotank C. M., July, 1748).

<sup>51</sup> S. R., XXIII, 27-29 (1715, c. 24).

<sup>52</sup> "An Additional Act to the Act, for the Tryal of Mean and Small Causes," Legislative Papers, 1689-1759, NCDAH. This act also established the maximum of five pounds for two or more justices and forty shillings for a single justice. Although initially effective for only two years, an act of 1734 re-established its ceilings ("An Act for reviving an Act, Intituled, An Additional Act, to the Act for Tryal of Small and Mean Causes," N. C. Acts, 1734, C. O. 5/333, P. R. O.; Carteret C. M., Sept., Dec., 1736; Pasquotank C. M., Jan., 1739/40). In 1741 the maximums were again set at forty and twenty shillings, but as these amounts were established in proclamation money, the change meant an effective increase of 300 per cent. The act no longer had a reference to justices of the quorum (S. R., XXIII, 175-177 [c. 15]).

<sup>53</sup> Perquimans C. M., Oct., 1741; Jan., 1741/42.

<sup>54</sup> The finding for an appellant as in Onslow C. M., April, 1745, was rare. For examples of verdicts for the appellee, see Hyde Court Dockets, June, 1749; Dec., 1750; Onslow C. M., Jan., 1743/44; April, 1744, April, 1745; July, 1748; Pasquotank C. M., Jan., 1739/40; Perquimans C. M., Jan., 1741/42.



simply as an action of "case."<sup>55</sup> Trespass on the case was a universal action for personal wrongs and injuries inflicted without force. The plaintiff used this action to obtain a remedy for damages he suffered from a broken contract, slander, negligence, or deceit. The most frequent basis for an action on the case was a debt or obligation arising from a breach of contract. Two types of actions on the case appeared sometimes under their own titles; the action of "assumpsit" and the action of "trover and conversion." The former pertained to a breach of contract, the latter to the wrongful appropriation of the goods of another.<sup>56</sup>

Two other types of suits frequently before the county courts were the actions of "debt" and "original attachment." While a plaintiff could use an action of debt to collect any sum of money owed by an agreement or contract, he had to use this action when the obligation was under seal. An original attachment was a procedure to compel the appearance of a debtor who left, or was about to leave, the jurisdiction of the government. This type of suit received its title from the fact that the attachment of the debtor's goods was the first order for the defendant's appearance. A creditor could have a justice issue a writ of attachment to the sheriff directing the seizure of sufficient goods of the debtor to satisfy the claims. The goods were held until the defendant replevied them with a bond for his appearance in court or until the goods were discharged by due course of law.<sup>57</sup>

<sup>55</sup> The civil docket of the Bertie Court for its November, 1742, term consisted of ninety-four cases. Sixty-two of these were actions of trespass on the case; eleven were actions of debt; eight were original attachments. Of the remainder two were actions of trespass by force and arms, one of trover and conversion, and one of slander; the others were not identified clearly (Bertie Court Dockets, Nov., 1742).

<sup>56</sup> Although the General Court drew a distinction between an action of trover and conversion and an action of case in its decision of an appeal from the Perquimans Court in 1735 (*infra*, p. 61), John Brady sued William Riddick at the July, 1743, term of the Chowan Court in an action on the case for the detention of two guns belonging to Brady (Chowan County Papers, III, 69). A more detailed explanation and discussion of these actions appear in Wood, *An Institute of the Laws of England*, pp. 534-554, and James Smith, *Civil Practice in the Court of Pleas and Quarter Sessions of North Carolina, in Ordinary Cases* (Raleigh, 1846), pp. 35-176. Also see Richard B. Morris, *Studies in the History of American Law, with Special Reference to the Seventeenth and Eighteenth Centuries* (New York, 1930), pp. 47-55.

<sup>57</sup> S. R., XXIII, 258-259 (1746, c. 2); XXV, 200 (1723, c. 9); Chowan County Papers, II, 44-45, 49; IV, 27; Bertie County Miscellaneous Papers, *passim*; Hyde County Miscellaneous Papers, *passim*.



In suing for damages the plaintiff took the precaution to set the amount he sought high enough to anticipate the most optimistic verdict. Normally the demand was for twice the debt, provided this amount did not exceed the maximum cognizable in the court. Thus, at the January, 1742/43, term of the Chowan Court, John Hull sued Charles Dent in an action on the case for damages of forty-eight pounds although the indebtedness was only twenty-four pounds.<sup>58</sup> The only damages a court regularly awarded in a suit arising from a debt or contract were the sum obligated and the court costs.

The parties to civil actions employed attorneys to litigate their cases in all but a few instances. Once engaged, the attorney represented his client until the case was fully settled and thus freed the client from attending each term during the long period most cases required for prosecution. If a court nonsuited or dismissed a case for a lawyer's failure to be present, the lawyer was subject not only to the loss of his fees but also to the payment of double damages to his client.<sup>59</sup> During court the justices exercised control over the attorney-client relationship to the extent of reassigning attorneys already engaged. An example occurred at the Chowan Court. Although Richard McClure, the clerk, had retained all of the attorneys present for the July, 1744, term in his action against Rachel Savage, the court heard and granted the defendant's petition that she be assigned Henry Vernon as her counsel and attorney.<sup>60</sup>

The suit of Michael Slaughter against Richard Rogers in the Chowan Court illustrates the procedure of a civil cause. The grounds of the action was a note in the amount of £36 2s. 6d., current money, payable on demand, that Rogers had given Slaughter on August 30, 1738. After unsuccessful attempts to collect the debt Slaughter decided to take the matter to court and employed Isaac Arthand as his attorney. On January 2, 1739/40, Arthand obtained a writ from James Craven, the clerk of the Chowan Court directing the Sheriff "to take the Body of Richard Rogers . . . (if to be found in your Bailiwick) and him safely keep so that you have him before Our Justices at Our next Court . . . to Answer to the suit of Michael Slaughter in a Plea of Trespass on the Case Damages Seventy pounds."<sup>61</sup> The sheriff, Thomas Luten, or his deputy, executed

<sup>58</sup> Chowan C. M., Jan., 1742/43.

<sup>59</sup> C. R., IV, 665-677.

<sup>60</sup> Chowan County Papers, III, 146.

<sup>61</sup> Chowan County Papers, II, 14. The clerk had such writs, prepared in advance with spaces left for the names, amount, and date to be filled in.

the writ. Rogers gave the sheriff a bond in the amount of £140, current money, for his appearance at the January court. Abraham Blackall, John Blount, Thomas Blount, Miles Gale, James Potter, and Peter Payne were securities for this bond.<sup>62</sup> The terms of the bond required Rogers to "make his appearance before the Justices" at the forthcoming court and to "stand & abide the Judgment of the said Court thereon and not Depart the Court Without Liance had."<sup>63</sup>

Slaughter's case required a full year for a final judgment. Arthand, his attorney, summarized the details of the complaint in the declaration which he filed with the clerk for a hearing at the January, 1739/40, term of the Chowan Court. The attorney entered as the pledges for the prosecution of his case "John Doe and Richard Roe," the fictitious names regularly used to meet the requirements of custom for two securities. When the crier called the defendant, Henry Vernon appeared as Rogers' attorney and asked permission to answer the charges at the next court. Thereupon, the justices continued the case. In April Vernon appeared and pled that the defendant "did not assume in Manner and form as the Pltf doth Declare against him and of this he put himself on the Country." As this was a request for a jury trial, Arthand signified he was ready, but the two attorneys obtained a respite for the trial until July. At that term the attorneys again had the action continued. Finally, in October the case came to trial. The court commanded the sheriff to summon a jury "who are related neither to the pltf not to the Deft to Recognize the Matter in Issue." The jurors, "who being Elected Tryed and Sworn,"<sup>64</sup> returned a finding for the plaintiff in the amount of the note and the "Costs and Charges by him Expended about his Suit." Vernon entered a motion which meant further delay. He moved an arrest in judgment to determine the costs and sought a continuance of the action until the following term. The court granted the request. However,

<sup>62</sup> The number of securities for this bond is unusual as only two were required.

<sup>63</sup> Chowan County Papers, II, 32. A few appearance bonds were printed except for the name, etc., but the majority used were prepared in longhand.

<sup>64</sup> As North Carolina laws make no mention of the method of challenging jurors, English custom and law presumably governed the procedure. For the English method, see Wood, *An Institute of the Laws of England*, pp. 591-593. From the procedure in the case of *Doe v. Millard* in the Perquimans Court it is possible that there was no opportunity for challenges. After an adverse judgment the defense attorney cited three defects in the selection of the jurors that would have been grounds for challenges (*Infra*, p. 61).

in January, 1740/41, when neither the defendant nor his attorney appeared, the court gave judgment against defendant in the amount the jury specified.<sup>65</sup>

When the sheriff endeavored to serve the writ in a suit, he was often unable to locate the defendant. Were the latter absent from his residence, the sheriff could leave a true copy of the writ with any adult member of his family. The sheriff then noted "Copy left" on the writ when he returned it to the clerk's office. The defendant was thereby obliged to appear at court as though the writ had been served on his own person. Upon not locating the residence of a defendant in the county, the sheriff could return the writ endorsed "not to be found." If the plaintiff desired to have the sheriff make additional efforts to locate and summon the defendant, the plaintiff could continue getting writs from the clerk.

Once the sheriff had executed and returned the writ, the attendance at court of the plaintiff or his attorney was necessary to proceed with the prosecution of the action. The experience of George Johnston in 1748 shows what would otherwise follow. After securing an original attachment against George Johnston in Bertie County, John Abbington, the plaintiff, failed to appear. When the court crier had called Abbington three times, the defendant's attorney petitioned the court for a nonsuit. The justices granted the same and passed judgment against Abbington for the costs, £10 6s., current money.<sup>66</sup> The order of a nonsuit was final. However, if the plaintiff wished to continue his efforts to collect his debt or damages, he could institute a new suit. Ordinarily a lawyer could prevent a nonsuit by referring his cases to another attorney or by asking the court to continue his actions until the following term. The court would consider such a request if the excuse were reasonable. The Craven Court promised to postpone Richard Lovett's cases when he was sick in 1742 and again the following year when he was detained at a circuit court. When the Craven Court nonsuited some of Lovett's cases on both occasions, he applied to the governor and council for redress. As a consequence, the governor and council removed three of the Craven justices from office.<sup>67</sup>

<sup>65</sup> Chowan C. M., Jan., 1740/41.

<sup>66</sup> *Fi. fa.* dated Nov. 24, 1748, Bertie County Miscellaneous Papers. Also see Bertie Court Dockets, 1725; Onslow C. M., Oct., 1734.

<sup>67</sup> Craven C. M., June, Sept., 1742; Sept., 1743; *C. R.*, IV, 675-677. The justices were reappointed nine months later (*C. R.*, IV, 712).

Whenever the defendant or his attorney failed to appear at court, the plaintiff had a variety of methods of obtaining the satisfaction he sought. If the sheriff had taken a bond for the defendant's appearance, the court could pass judgment against the securities.<sup>68</sup> Had the sheriff failed to take a bond in executing the writ, he himself became subject to the judgment. The plaintiff could then choose between an order against the sheriff or an attachment against the defendant's estate. He usually chose to proceed against the sheriff, but the sheriff, in turn, could obtain an attachment against the defendant's estate.<sup>69</sup> These judgments against the securities or the sheriff were interlocutory. If the defendant appeared, the normal procedure for an action followed. Regardless of the defendant's absence, the plaintiff had to prove his debt or injury. The plaintiff established a debt by submitting a note or contract as evidence, but only a jury determined the amount of damages. Therefore, the court ordered a writ of inquiry when the plaintiff sued for damages. This writ directed the sheriff to summon twelve men at the next term to inquire and determine the damages the plaintiff had sustained.<sup>70</sup> After the jury returned its award, the court passed final judgment upon the defendant and issued an order for the public sale of as much of the attached goods as would satisfy the damages and accruing costs.<sup>71</sup>

Since a case often remained on a court docket for a year or more before final judgment, the plaintiff and defendant of a suit frequently resorted to arbitration to obtain a quicker settlement. William Whitfield and William Deal adopted this method to settle their dispute at the February, 1732/33, term of the Bertie Court. Although Deal acknowledged an indebtedness, the amount was disputed. The two men agreed to submit their controversy to the arbitration and award of John Jones, Sr., and John Beverly, Jr., who were to examine the evidence on both sides. Upon their disagreement or failure to make an award, the matter was to be left to the umpirage of George Powell. In consenting to arbitration Whitfield and Deal agreed to accept the award as a rule of court. In May the arbitrators returned an award to Whitfield for £47

<sup>68</sup> *Stafford v. Abrams*, Chowan C. M., Jan., 1740/41.

<sup>69</sup> Writ dated Sept. 19, 1744, Chowan County Papers, III, 134.

<sup>70</sup> Writ dated Feb. 10, 1739/40, Chowan County Papers, II, 37.

<sup>71</sup> *Perquimans C. M.*, Oct., 1739; *Chowan C. M.*, Jan., 1740/41; *Onslow C. M.*, Jan., 1734/35; Oct., 1743; *S. R.*, XXIII, 17 (1715, c. 15), 257-259 (1746, 2).



11s. and an additional £21 for his costs. The court then accepted this finding as its judgment.<sup>72</sup> The provision for an umpire in this case was an optional arrangement to insure a settlement. Without an umpire the arbitrators' failure to make an award would have necessitated bringing the cause to trial.<sup>73</sup>

The defendant sometimes brought a speedy end to an action by reaching an accord with the plaintiff. At the January, 1742/43, term of the Chowan Court John Hull, Esq., pled his own suit against Charles Dent in an action of trespass on the case for damages of forty-eight pounds. This demand was for twice the indebtedness Hull maintained that Dent had assumed. After conferring with Hull, Dent came into court and confessed judgment for £17 15s. and costs, provided he received a stay of execution for five months. The court pronounced judgment to this effect.<sup>74</sup>

The act of 1740 which permitted a person to use "inspector's notes" to satisfy court judgments placed the creditor at a disadvantage.<sup>75</sup> Products were accepted at the county warehouses at values so much above the market price that a debtor frequently welcomed a suit as a means of discharging his debt. In describing this situation to the Board of Trade in 1744, Henry McCulloch wrote that it was "better for the Creditor to receive any Composition the Debtor may think proper to offer him then [*sic*] to sue for the same."<sup>76</sup>

Two cases in the Perquimans Court during 1734 and 1735 illustrate the manner in which a party could obtain relief from the orders and judgments of a court and indicate the advantage of employing capable attorneys. In one action, Thomas Blitchenden, with John Conyers as his attorney, brought suit against Ralph Doe. Appearing in July, 1734, as the defendant's attorney, Robert Forster asked to have read the writ and the declaration. While the plaintiff's writ called Doe to answer to an "action of the case," the declaration stated that Blitchenden had lost "Six Stout large and

<sup>72</sup> Bertie C. M., Feb., 1732/33; Aug., 1733. Also see Carteret C. M., Dec. 1745; Craven C. M., March, 1737/38; Chowan C. M., April, 1742; Chowan County Papers, II, 133, 134.

<sup>73</sup> Bertie C. M., Nov., 1732; Perquimans C. M., Jan., 1741/42.

<sup>74</sup> Chowan C. M., Jan., 1742/43. For similar cases, see Chowan C. M., April 1742; Carteret C. M., March, 1743/44; Onslow C. M., April, 1736.

<sup>75</sup> S. R., XXIII, 157 (c. 13). For an account of the issuance of these notes, see *infra*, p. 116.

<sup>76</sup> S. R., XI, 107.



extraordinary fatt hoggs of the price of Twenty four pounds Current," of which Doe had obtained possession and refused to yield to the plaintiff. Forster asked for an immediate judgment quashing the writ on the grounds that the writ called Doe to answer an action of the case and that the declaration described damages under trover and conversion. These, he maintained, were different actions and were contrary to the proper procedure. The court heard Forster's demurrer but overruled it. Thereupon, Forster appealed to the General Court giving proper security to prosecute the cause in the higher court. As soon as the General Court reversed the judgment of the Perquimans Court, the case was stricken from the Perquimans' docket, where it was being carried as "continued."<sup>77</sup>

In the other suit before the Perquimans Court, Ralph Doe employed John Conyers in his action against John Millard for an obligation of ten pounds, current money, due from the sale of a barrel of pork. Although the jury's verdict gave the plaintiff only the costs of his suit, John Anderson, Millard's attorney, moved for an arrest in judgment. At the July, 1735, term Anderson called attention to eight flaws in the procedure. He pointed out first that under the laws of the land the jury should have given its verdict for the defendant rather than the plaintiff. He then mentioned two oversights of the plaintiff's attorney. Conyers had failed to enter in his declaration the pledges to prosecute the action, and he had also neglected to file his "warrant of attorney," or license, with the clerk upon filing the declaration. Anderson called attention to four defects relating to the jurors. Several of them were not qualified to serve as their names were not among those approved by the Assembly;<sup>78</sup> one was under age; another was a dissenting minister; and one did not agree to the verdict. Finally, Anderson maintained that the verdict was not according to the issue and that the verdict and the records of the proceedings were "uncertain and wanted forme." In October the attorneys for each party argued these points before the court until the justices, having "fully understood" the matter, reversed their earlier judgment and awarded the defendant his costs.<sup>79</sup>

<sup>77</sup> Perquimans C. M., April, 1735.

<sup>78</sup> An act of 1723 contained a list of the men who could serve as jurors. The Assembly supplemented this list in February, 1739/40, by agreeing on a resolution to the effect (*S. R.*, XXV, 184-190 [1723, c. 1]; *C. R.*, IV, 488, 515-526).

<sup>79</sup> Perquimans C. M., Oct., 1735.

If the party who lost a suit did not immediately pay into the clerk's office the sum recovered, or obtain a release from the judgment, the successful party could apply to the clerk for a writ of execution. The writ ordered the sheriff to take sufficient goods and chattels belonging to the loser to satisfy the judgment. The sheriff thereupon seized the goods and held them ten days subject to redemption by the owner. At the end of this time the sheriff had the goods appraised by four "substantial" freeholders who had been first sworn before some magistrate.<sup>80</sup> According to an act of 1715, the sheriff awarded to the person who had obtained the execution as much of the goods as would satisfy the judgment.<sup>81</sup> In practice the sheriff frequently sold the goods and returned the funds to the next court.<sup>82</sup>

The costs which were a part of each judgment covered the fees due to certain officers of the court. The only constant fee was that of the attorney—£5 12s. 6d., current money. The clerk's fee varied with the number of writs he had to issue, but the total of his charges in most suits ranged between eight and ten pounds current money. For his services the sheriff received fees amounting to approximately half of the clerk's. The crier occasionally received as much as five shillings. In cases of original attachment the justice and constable were entitled to fees of almost ten shillings each. With these fees the costs of an average suit varied from fifteen to twenty-five pounds, current money. The party which was assessed the costs also had to bear the expense of his own attorney.<sup>83</sup>

The costs of an action sometimes included the payment of witnesses. When a case required witnesses, either party could have the clerk issue subpoenas for the witnesses' appearance upon the

<sup>80</sup> Each party to the suit could nominate two of these appraisers. In executions not exceeding fifty shillings, only two appraisers served (Carteret C. M., March, 1725/26). If the appraisers were not duly sworn, a new execution was required (Carteret C. M., March, 1747/48).

<sup>81</sup> S. R., XXIII, 22 (1715, c. 20).

<sup>82</sup> Carteret C. M., March, 1747/48. In January, 1740/41, the Chowan Court ordered that a judgment be recovered from the sheriff for his having failed to return the money levied on a defendant (Chowan C. M., Jan., 1740/41).

<sup>83</sup> Pasquotank Executions, 1729-1755, *passim*; Bertie County Miscellaneous Papers, *passim*; Chowan County Papers, III, 85. The fees of the clerk and sheriff were established in proclamation money payable in bills on a basis of four to one. The attorney's fee of £5 12s. 6d. was actually fifteen shillings proclamation, payable at a ratio of seven and a half to one (S.R., XXIII, 21 [1743, c. 4]).

penalty of one hundred pounds. The allowances for the witnesses' travel to and from court and for each day of attendance were added to the costs of the case. Since witnesses were expected to be on hand whenever the case came to trial, the frequent postponement of an action from one term to the next increased this item of costs in proportion to the delay. In an action of case for slander, damages fifty pounds, between James Henderson and James Green, Richard Lawson was a witness for the plaintiff. Upon his petition he received seventeen shillings six pence for attending the court seven days and ten shillings for six days travel coming and going to three courts.<sup>84</sup>

<sup>84</sup> Onslow C. M., Jan., 1736/37. The basis was two shillings six pence per day at court and twenty pence per diem for coming and going (*S. R.*, XXIII, 20 [1715, c. 17]). In 1746 the allowances became two shillings, proclamation money, per day at court and three half pence per mile and ferriage fees for travel (*S. R.*, XXIII, 262-263 [c. 2]). Also see Onslow C. M., July, 1748; Carteret C. M., June, 1748.

## CHAPTER IV

# Jurisdiction of the Court

## Probate Proceedings

A large portion of the county court's business at its quarterly terms consisted of probating or certifying such documents as deeds, bills of sale, and wills and recording such facts and figures as the size of families and the marks and brands of cattle. Although some of these records could be proved before the General Court or the governor, accessibility prompted the citizens to resort chiefly to their county courts in disposing of these matters.

The proving of deeds in the sale or gift of land was the most frequent type of transaction at the county court. An act of 1715 required this procedure for validating deeds:

no Conveyance or Bill of Sale for land (other than Mortgage) in what manner soever drawn shall be good & available in Law unless the same shall be acknowledged by the Vendor or proved by one or more Evidences upon Oath either before the Chief Justice for the time being or in the Court of the Precinct where the land lyeth & registered by the Publick Register of the Precinct where the land lyeth within twelve months after the date of the same Deed and that all Deeds so done & executed shall be Valid.<sup>1</sup>

The manner of proving a deed depended upon which of the participants to its signing were present at court. Luke White, the grantor, merely acknowledged in open court before the Chowan justices the deed he had made to John Hodgson, Esq.<sup>2</sup> Edward Shepard, a subscribing witness, testified under oath to the Carteret

<sup>1</sup> S. R., XXIII, 50 (c. 38). Later laws continued this procedure although extending the time for registration (S. R., XXIII, 185-186 [1741, c. 21], 301 [1748, c. 4]).

<sup>2</sup> Chowan C. M., July, 1745.

Court that he had seen Benjamin Small sign, seal, and deliver a deed for a hundred acres of land on Deep Creek to David Bailey and that he had seen David Lewis witness the same.<sup>3</sup> The procedure was more complex for a deed from Christopher Jackson to John Hallowell. Neither Jackson nor the witnesses were planning to attend the Perquimans Court. Under these circumstances Jackson gave to Nicholas Stallings his power of attorney to authenticate the deed. At court Stallings first had a witness to the power of attorney prove it, and then Stallings acknowledged the deed for Jackson.<sup>4</sup> When a deed involved the relinquishment of the right of dower on the part of a wife, the court ordered the wife to be examined privately concerning her willingness in the matter. The Craven Court had Katherine Routledge questioned about her agreement to a deed from Nicholas Routledge, her husband, to James Mackilwean. She acknowledged that her consent to the sale had been given of her own free will.<sup>5</sup> A court subpoenaed witnesses for their appearance and testimony if such action became necessary.<sup>6</sup> Once a deed had been adequately proved, either a member of the court or the party exhibiting the deed moved that it be recorded by the register.

Until the court accepted the proof of a deed, the validity of the document could be challenged. When Thomas Adham endeavored to have a deed proved in the Bertie Court which he had obtained from Richard Williford, Williford objected that the deed had not been drawn according to their agreement. Upon hearing the debates and evidence of both parties the court adjudged the deed to be null and void and ordered it to be canceled.<sup>7</sup>

The procedure for proving deeds applied to other documents. John Freeman acknowledged before the Craven Court the articles of his agreement with Sir Richard Everard concerning some cattle in the hands of Robert Taylor and asked that the agreement be recorded. Before the same court, William Hintey, a subscribing witness, proved a bill of sale for seven Negroes from Robert Jarman to Colonel William Wilson.<sup>8</sup> On an earlier occasion George Roberts had similarly proved a deed of mortgage from Joseph Hannis to Colonel Wilson.<sup>9</sup>

<sup>3</sup> Carteret C. M., Sept., 1745.

<sup>4</sup> Perquimans C. M., Jan., 1741/42.

<sup>5</sup> Craven C. M., March, 1745/46; S. R., XXIII, 35 (1715, c. 28).

<sup>6</sup> Bertie C. M., Nov., 1742.

<sup>7</sup> Bertie C. M., Nov., 1735.

<sup>8</sup> Craven C. M., June, 1741.

<sup>9</sup> Craven C. M., Dec., 1737.



The manner of proving deeds or mortgages made outside the colony for property within the province was somewhat different. As a step in a foreclosure, Joseph Bell produced before the Carteret Court a mortgage bond of William Wilkins, Jr., to Thomas Nelson, a merchant of Yorktown, Virginia, for a Negro boy named Jemy in the possession of Ann Wilkins, a widow. Bell proved the mortgage by submitting affidavits under the seal of Virginia and attested by William Gooch, the lieutenant governor of that colony. After examining the papers and admitting them to record, the court ordered the widow to deliver Jemy to Bell pursuant to the mortgage.<sup>10</sup>

Another variation in procedure occurred in the proving of a power of attorney before the Carteret Court in 1747. William Craig asserted under oath to George Read, a notary public and clerk of the court, that he had seen Robert Pringle sign and seal a letter of attorney unto Thomas Lovick, Esq. The court accepted this testimony and ordered the letter to be registered.<sup>11</sup>

During a court session persons frequently stated under oath the number of members in their family in order that they might qualify for land patents issued under the headright system. This method of granting land on the basis of a specific acreage per person began in North Carolina in 1663 as a part of the Proprietors' first plan for attracting settlers.<sup>12</sup> The royal instructions drawn up for Governor Burrington in 1730 and for Governor Johnston in 1733 authorized them to grant to any person not more than fifty acres "for every white or black man woman or child of which the Grantees family shall consist at the time the grant shall be made."<sup>13</sup>

The policy of issuing land patents changed several times during the years from 1730 to 1750. In November, 1732, Governor Burrington and his council agreed to issue grants on a basis of fifty acres per person to the petitioners who made an oath before a magistrate of the number of headrights they claimed.<sup>14</sup> In 1735 Governor Johnston disclaimed knowledge of any restriction in his instructions against granting more than fifty acres per person. He

<sup>10</sup> Carteret C. M., Sept., 1745. This procedure was prescribed for deeds for sale of land (S. R., XXIII, 51 [1715, c. 38]).

<sup>11</sup> Carteret C. M., Sept., 1747.

<sup>12</sup> C. R., I, 51. The amount per person varied from time to time under the Proprietors. In obtaining the land, a person paid fees for processing the patent and surveying the plot.

<sup>13</sup> C. R., III, 102, 498.

<sup>14</sup> C. R., III, 424.

and a majority of his council determined not to be bound strictly by the limit of fifty acres nor to require a proof of the number of headrights.<sup>15</sup> Governor Johnston's policy, however, led to the king's order in council issued in 1740 which required people desiring land to appear before the governor and four members of his council to prove their rights to land on the quota of fifty acres a person.<sup>16</sup> After complying with this order for almost six months, Governor Johnston and his council proposed a more liberal policy in September, 1741, and ordered the policy into effect until the crown should approve or countermand it. In making grants, Johnston and the council decided to allow one hundred acres for every white person in a family and fifty for every black. Furthermore, in consideration of the time and expense a person would have to undergo in appearing personally before the council, Johnston and his council announced that they would permit the inhabitants to swear to their headrights before the county courts. A certificate of their oath signed by the chairman and the clerk of the court would then be considered as full proof of the headrights when forwarded to the governor and council.<sup>17</sup>

As soon as the news of the council's action was known throughout the colony, the proving of the headrights became an important item of business on the calendar of the county courts.<sup>18</sup> In order to take advantage of the liberal offer of land Joseph Winslow proved seven headrights before the Perquimans Court in January, 1741/42. He also petitioned the court: "Understanding our Gracious King has granted to every one of his Subjects one hundred Acres of Land and I having Several in my family I desire to have an order for Rights for two hundred Acres."<sup>19</sup> The court granted his petition and ordered the clerk to forward a certificate of his rights to the secretary of the province. The secretary, in turn, drew up a petition in Winslow's name to be presented to the governor and council. The petition requested an order for the survey of land described therein, land which Winslow had already selected. The governor and council gave their approval in March, 1743.<sup>20</sup>

<sup>15</sup> C. R., IV, 60.

<sup>16</sup> C. R., IV, 592-593, 1076-1077, 1133-1134.

<sup>17</sup> C. R., IV, 599-600.

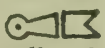
<sup>18</sup> At the November, 1742, term of the Bertie Court twenty-five men proved their rights (Bertie C. M., Nov., 1742).

<sup>19</sup> Perquimans C. M., Jan., 1741/42.

<sup>20</sup> In the minutes of the council the name appears as "Winsley," a common variation of Winslow (C. R., IV, 628).

After the governor and council approved a petition, a warrant was then issued to the surveyor-general or his deputy to survey the plot which the petitioner desired. When the survey was complete and the petitioner had paid his fees, the governor issued the patent for the land.<sup>21</sup>

Winslow was one of many petitioners who did not take up the full acreage to which they were entitled. There are probably several reasons for this. Except in the west there was a scarcity of good land not already taken. In describing the land he was granting in 1741, Governor Johnston stated to his council that it "contained but a small quantity of good Soil and a very large proportion of pine barren."<sup>22</sup> Also, when the individual selected a particular plot, he had to bear in mind that he or his heirs had to clear and cultivate 3 per cent of the land within three years in order to validate his patent. Furthermore, there were the costs of obtaining and holding large tracts of land. When William Kinchen, Sr., obtained a land grant in 1745 for four hundred acres his fees amounted to more than four pounds, proclamation money and the annual quitrent due the king was four shillings per hundred acres.<sup>23</sup>

Another common item of court business was the recording of marks and brands. The law provided for such a record to discourage the stealing of livestock which at this time usually ran at large in the woods. In all disputes the marks on record with the county clerk governed the settlement. Therefore, the individual took care to register both a description and diagram of his mark and brand. In 1741 James Craven, the clerk of the Chowan Court recorded for his mark "a Swallows fork in the right Ear and a Overkeel and underkeel and hole in the Left Ear thus  His brand was " J \* C thus in Large and one Small I C thus."<sup>24</sup>

The law required an owner to brand all of his horses eighteen months old, to earmark or brand his cattle twelve months old, and to earmark all his hogs six months old. Anyone killing cattle or hogs in the woods was expected to show to a magistrate or to two

<sup>21</sup> C. R., IV, 1084. For the fees, see C. R., IV, 1127-1128.

<sup>22</sup> C. R., IV, 599.

<sup>23</sup> Land Grant to William Kinchen, Sr., Chowan County Papers, IV, C. R., IV, 744, 748, 770, 1126-1128.

<sup>24</sup> Chowan C. M., April, 1741.

reeholders within two days the head and ears of every hog and the hide with ears attached of the cattle.<sup>25</sup>

An episode in Perquimans Precinct illustrates the importance of marks and brands. During the winter of 1736/37 the inhabitants of a neighborhood rounded up and slaughtered the hogs and pigs in the nearby woods. No one made an exact check of the marks. When the task was completed, the title to sixteen hundred pounds of pork was in question. At the April court the justices authorized Joseph Perresho, a constable, to sell the meat at an auction and to give public notice for all claimants to appear at the next court to make good their title. In July Samuel Swann and Richard Whitbe appeared to prove their claims. The justices first heard the testimony of William Laydon. He reported that he had recognized the marks of Swann, Whitbe, and Widow Snowden. Joseph Perresho then testified he had taken "a great deal of pains to follow the said Ears" and had seen three pairs of ears with Whitbe's mark, one pair for Widow Snowden, another pair for Samuel Swann. John Snowden reported his part in taking the pork out of the area, but he had only identified Whitbe's mark on three pair of ears. He had seen other marks but had not remembered the quantity. The court decided to allow each claimant the value of a hundred weight of pork for each pair of ears duly proved as having their marks, the value per hundred weight being £3 2s. 5¼d.<sup>26</sup>

The probation of a will before a county court took place in the county where the testator resided.<sup>27</sup> Ordinarily a relative or friend brought the will into court and requested that it be proved. The procedure at the September, 1740, term of the Craven Court was typical. Isabella Keith, the widow of James Keith, came into court and exhibited the will of her late husband. John Overton and Andrew Bass also appeared before the justices. As subscribing witnesses to the will, the two men testified under oath that they had seen James Keith "Sign Seal pronounce & declare" the docu-

<sup>25</sup> S. R., XXIII, 57-59 (1715, c. 43), 165-168 (1741, c. 8). The 1715 act did not include magistrates in this last requirement.

<sup>26</sup> Perquimans C. M., July, 1737-July, 1738.

<sup>27</sup> Wills could also be proved before the governor or the General Court (S. R., XXIII, 67-70 [1715, c. 48]). My survey of the data in John B. Grimes, compiler, *Abstract of North Carolina Wills Compiled from Original and Recorded Wills in the Office of the Secretary of State* (Raleigh, 1910), indicates that after 1700 only a few wills were proven before the General Court, a larger number before the governor, and more than two-thirds of the total before the precinct or county courts.



ment to be his last will and testament, and that they had also seen Howell Jones sign as the other witness. The court thereupon admitted the will to record. Then William Heritage, as attorney for Mrs. Keith, moved that the court grant an order for the issuance of letters testamentary to his client. The justices were favorable. As soon as Mrs. Keith had taken the oath of an executrix, they ordered the clerk to forward a notice of the proceedings to the provincial secretary so that the letters could be issued.<sup>28</sup>

Although the oath of at least one subscribing witness was ordinarily required to prove a will, the courts could permit a will to be probated without the signatures of witnesses. At the April, 1744, term of the Chowan Court, John Norcom exhibited "a Will or Instrument of Writing called a Last will" of Cornelius Norcom, his brother. Since the will had not been witnessed, John Norcom called upon Richard and Alexander Haughton, two former schoolmates of Cornelius who were present at the court, to examine the will. They declared under oath that they believed the signature of the will to be the handwriting of Cornelius. The court accepted their opinions as sufficient proof.<sup>29</sup>

A will made orally was also valid if a witness properly proved the provisions. Shortly after the death of James Roberts of Craven County, James Conaway appeared before Daniel Shine, a justice of the county, and stated under oath what desires he had heard Roberts express just before he died. This testimony, known as a nuncupative will, was then as valid in law as any other will.<sup>30</sup>

When a person died intestate, there was, of course, no one named as the executor, and the court had to appoint an administrator to settle the deceased's estate. Usually the wife or son petitioned the court to grant them an order for the letters of administration. Sometimes the next of kin renounced their right. When Elizabeth Parker resigned her right of administration on the estate of her late husband, Frank Parker, the Bertie Court granted the petition of Edward Buxton, the greatest creditor, for the appointment.<sup>31</sup> The court regularly appointed the greatest creditor when no rela-

<sup>28</sup> Craven C. M., Sept., 1740. The clerks of the county courts were frequently entrusted with a few of the letters testamentary and letters of administration with the names of the persons left blank to be filled in and delivered to the persons the court qualified (C. R., VII, 475).

<sup>29</sup> Chowan C. M., April, 1744.

<sup>30</sup> Grimes, *Abstract of North Carolina Wills*, p. 316; Craven C. M., March, 1745/46.

<sup>31</sup> Bertie C. M., Feb., 1736/37. Also see Craven C. M., Dec., 1744.



ive appeared. This was the case at the May, 1740, term of the Bertie Court. Roland Williams prayed for the administration of the estate of Adam Wilkinson, deceased, who was indebted to Williams for eighty pounds. The justices agreed. Williams then took the oath of an administrator and gave a bond of two hundred pounds for the performance of his duties.<sup>32</sup>

On certain occasions the courts found it necessary to appoint administrators even when the deceased left a will.<sup>33</sup> Three reasons for their doing so were the loss of the will, the refusal of the executor or executors named in the will to serve, and the neglect of the testator to name an executor in his will. Since Cornelius Norcom failed to name an executor in his will, the Chowan Court appointed his brother, John, to be the administrator "with the will annexed." Under this appointment John Norcom was bound to carry out the provisions of his brother's will as faithfully as if he were the executor.<sup>34</sup>

The duties of an administrator paralleled those of an executor to such a degree that it is necessary to distinguish between them only when a difference occurred. The immediate obligation of an executor was to see that the deceased was buried "in a Decent Manner according to his Rank and Character, but with Regard to His Estate left after Debts paid."<sup>35</sup> As soon as an executor took his oath and entered his office, he was expected to draw up an inventory of the goods and chattels the deceased possessed at the time of his death. Regardless of where he probated the will, the executor made a return of the inventory to the court of the county in which the goods were located.<sup>36</sup> For convenience he could prove the inventory before a neighboring justice and save himself the trip to the court house.<sup>37</sup> The purpose of this inventory was to discover the contents of the estate and to supply a list of the goods that could be sold at public auction in the settlement of the debts

<sup>32</sup> Bertie C. M., May, 1740. Also see Perquimans C. M., Oct., 1739; Craven C. M., June, 1744. In petitioning the Chowan Court for the administration of Esther Gravenor's estate, Sarah Falconar informed the justices that she was not only the mother of the deceased but also "the Greatest Debiter [*sic*]" (Chowan C. M., July, 1744; Chowan County Papers, III, 121).

<sup>33</sup> Onslow C. M., April, 1744.

<sup>34</sup> Chowan C. M., April, 1744.

<sup>35</sup> Wood, *An Institute of the Laws of England*, p. 325; Chowan County Papers, IV, 37.

<sup>36</sup> S. R., XXIII, 108 (1723, c. 10).

<sup>37</sup> Chowan C. M., Oct., 1741.

of the deceased. Once the proven inventory was exhibited in court and recorded by the clerk,<sup>38</sup> the executor could seek the court's order to sell the perishable goods.<sup>39</sup> Often the executor obtained this order at the time he qualified;<sup>40</sup> however, almost three years lapsed before the executrix of Michael Slaughter received an order for the sale of the deceased's goods.<sup>41</sup> Notice of a sale was posted on the court house together with a list of the goods offered. The court required an account of the sale at the following term.<sup>42</sup> When Elizabeth Clayton found that in selling the perishables of Zebulon Clayton's estate the return was insufficient to pay the debts, she obtained permission from the Perquimans Court in April, 1737, to sell enough of the unperishable part to satisfy the obligations. She filed the return from the second sale in October for the amount of £1720 13s. 6d.<sup>43</sup>

Much of the delay in settling an estate arose from the civil actions in which the executor frequently found himself involved as either plaintiff or defendant. His natural aim in representing the deceased was to collect as much as he could and pay out as little as possible. As soon as the executor settled the debts of the deceased, he could dispose of the legacies. Should he neglect to pay the legacies, the beneficiaries could either petition the court for an order to that effect<sup>44</sup> or bring an action against him.<sup>45</sup>

An administrator followed a different procedure in the final distribution of an estate after the debts were settled. He petitioned the court for an appointment of "dividers" to apportion the estate among the survivors. Under a North Carolina law of 1715 the widow was entitled to a one-third part, the children sharing the remainder in equal portions.<sup>46</sup> The court usually appointed four men to the task. They, or any three, could make the division after being first sworn before a magistrate to fulfil the trust imposed upon them. The group proceeded to allot the property according to the number of shares.<sup>47</sup> As far as possible, each beneficiary re-

<sup>38</sup> Bertie County Records, Inventories of Estates, 1728-1744, *passim*.

<sup>39</sup> Craven C. M., June, 1744; Chowan C. M., July, 1743.

<sup>40</sup> Pasquotank C. M., July, 1745; Chowan C. M., April, 1743.

<sup>41</sup> Chowan C. M., Jan., 1743/44.

<sup>42</sup> Chowan C. M., Jan., 1743/44.

<sup>43</sup> Perquimans C. M., April, 1737. Also see New Hanover C. M., June, 1741.

<sup>44</sup> Bertie C. M., Feb., 1741/42.

<sup>45</sup> S. R., XXIII, 263 (1746, c. 2).

<sup>46</sup> The law provides for other divisions when appropriate (S. R., XXIII 68-69 [1715, c. 48]).

<sup>47</sup> For an example, see William Hinton's estate, Chowan County Papers, I 111.

ceived some of each type of property—i.e., slaves, cattle, etc. At the next court the dividers exhibited their report. If acceptable, as always seemed to be the case, the justices ordered that the division be recorded and filed.<sup>48</sup>

The final duty of an administrator was to render to the court an account of his transactions.<sup>49</sup> As a part of this account the administrator inserted a claim for his necessary expenses and an allowance for his inconvenience. James Turnbull exhibited to the Chowan Court in July, 1744, the following claims<sup>50</sup> in his administration of the estate of Elizabeth Hanmore:

For letters of Administration	£6:	10:	0
Paid to Clerk of the Court	2:	0:	0
My Extraordinary Trubel advartizing & attending			
the Drs & Creditors		13 days	
ditto at the County Court		3 days	
ditto July Curt gl [General Court]		10 days	
ditto at the County Court		1 day	27: 0: 0

The court referred an administrator's account to several of its members for their examination. Thus, in April, 1745, the Chowan Court referred William Luten's account of the estate of Henderson Luten to Abraham Blackall and Peter Payne for a report on the amounts therein at the next court. These two "referees" returned their findings in January, 1745/46. Reporting that the administrator should be held personally responsible for some pork and tobacco to the value of £49 10s., they recommended nevertheless that the court allow him that sum as his commission and accept the account.<sup>51</sup>

<sup>48</sup> Chowan County Papers, III, 2; Chowan C. M., July, Oct., 1741; July, 1745. A similar division was made of the estate of Michael Slaughter although his widow was his executrix. The action was taken on the motion of Peter Payne, the sheriff and guardian of a daughter of the deceased. The widow had remarried (Chowan C. M., April, 1744—April, 1745). Also see Bertie C. M., Nov., 1742.

<sup>49</sup> His oath as an administrator prescribed this report, whereas the executor was not so bound (Oaths dated 1728, Perquimans Court Papers, 1709-1848).

<sup>50</sup> Chowan County Papers, III, 114, 115. In a claim for settling her husband's estate Mary Richards asked the Chowan Court in January, 1746/47, to be allowed twelve pounds "to my own Trouble" (Chowan County Papers, IV, 37).

<sup>51</sup> Chowan C. M., April, 1745; Jan., 1745/46.

# Jurisdiction of the Court

## Supervision of Orphans

The county court served as an orphans' court at its quarterly terms. In this capacity the justices had "full Power and authority to award process and hear & determine all & every matter cause & thing for the Disposal & relief of Orphans & securing their Estate within . . . [the] County."<sup>1</sup> This jurisdiction over orphans supplemented the probate authority and enabled the court to supervise every aspect of the settlement of estates.

The court's first concern was to obtain the assurance that someone would look after the orphans. Whenever possible, the justice secured a guardian for the task. The duties of the guardian were to nurture and train the orphans and to manage their estate profitably. According to law, a guardian "Educated & provided for [his wards] according to their Rank & degree out of the Income or Interest of their Estate & Stock." When an orphan's estate was so small that no one would accept the guardianship, the court bound out the orphan as an apprentice to learn some "Handycraft Trade" or suitable employment.<sup>2</sup>

The method of selecting a guardian depended upon the age of the orphan. A court ordinarily took no formal action with respect to children who were under the age of fourteen. When a man died his widow usually became the guardian of their children of this age. When both parents were deceased, the relative or friend who

<sup>1</sup> Commission dated March 6, 1738/39, Pasquotank Justices Appointed, 1728-1774. This same provision appeared in commissions issued for Chowan in 1695 and for Perquimans in 1702/03 (Chowan County Papers, I, 12; Perquimans C. M., Feb., 1702/03; C. R., I, 575).

<sup>2</sup> S. R., XXIII, 70 (1715, c. 49).



qualified as the executor or administrator of the parent's estate normally served as the guardian. However, if the court decided that circumstances recommended some other arrangement, the justices could appoint anyone they desired. In the case of orphans fourteen years of age or older, the orphans themselves chose their guardians. This was the orphan's right under common law. When an orphan expressed his choice, the court would "nominate and appoint" the guardian as a matter of course. Guardians chosen by the orphans themselves account for most of the appointments the courts made.<sup>3</sup>

The experiences of the widow and orphans of Michael Slaughter provide a typical illustration of guardianship. In drawing up his will in February, 1740/41, Michael Slaughter made no mention of a guardian but merely specified, "I doe hereby Constitute & Ordain my Beloved wife Elizabeth Slaughter to Be my Sole Executrix of this my Last Will and testament."<sup>4</sup> After his death a few days later, Elizabeth Slaughter, the widow, qualified as his executrix and continued to care for their daughters. Sometimes during the next three years Mrs. Slaughter married James Wallace, and he became the guardian of her children without any court action. By January, 1743/44, the daughter, Elizabeth Slaughter, was fourteen years old, and she decided to choose her own guardian. She came before the Chowan Court and asked the justices to appoint Peter Payne, the sheriff, to be her guardian. With the court's consent, Payne assumed the responsibility and gave security of eight hundred pounds for his proper care of her share of her father's estate. Because no division of the property had been made, Payne petitioned that such action be taken, that the perishable part be sold, and that James and Elizabeth Wallace be required to

<sup>3</sup> All of the bonds filed in Pasquotank Guardian Bonds, 1721-1760, at the NCDAH apparently were given by guardians chosen by the orphans. In a few instances prior to 1750 a father appointed a guardian for his children in his will (John B. Grimes, *North Carolina Wills and Inventories Copied from Original Wills and Inventories in the Office of the Secretary of State*, Raleigh, 1912, pp. 89-91, 167-168, 301-303). The small number of appointments of guardians by this method was probably due to the fact that North Carolina law did not specifically authorize "testamentary guardianship" until 1755 (S. R., XXV, 319-320 [c. 4]). For a discussion of the English system of guardianship, see Henry Swinburne, *Treatise of Testaments and Last Wills; Compiled out of the Laws, Ecclesiastical, Civil, and Canon; as also out of the Common Laws, Customs, and Statutes of This Realm*, annotated by John J. Powell (7th ed.; London, 1803), I, 263-296.

<sup>4</sup> North Carolina Wills, 1663-1789, XXVIII, 77.



give security for the guardianship and estate of Michael's orphans who were not yet old enough to choose their own guardians. The court granted these requests and issued the necessary orders. The justices appointed four and later five men to divide the estate according to the deceased's will. One-third of the perishable and imperishable parts of the property had been reserved for the widow in the will; the remainder was to be divided equally among the orphans.<sup>5</sup> By July the division was made and the perishable part sold.<sup>6</sup> James and Elizabeth Wallace exhibited an account of the sale and their disbursements in looking after the estate. The court referred the statement to three of the justices "to Audit and Report to the next Court." At the same time the court set James Wallace's bond for the care of the whole estate at the sum of four thousand pounds. In April, 1745, the justices formally accepted the account submitted the previous July. Thereupon, the court required Peter Payne to give five hundred pounds security for the funds he had in his hands which belonged to Elizabeth Slaughter, his ward.<sup>7</sup>

The Chowan Court's appointment of guardians for the orphans of Edward Standing illustrate the power of a county court to make changes in guardianship. Standing's widow, Sara, obtained the administration of her late husband's estate in 1739 or 1740<sup>8</sup> and continued to care for her small children. A year or so later she married Joseph Creasey. Her son, Henderson, then chose his stepfather to be his guardian, and the Chowan Court consented in July, 1743. Creasey entered security for his ward's property and at the next term of court returned a division of Edward Standing's estate. In January, Sarah Standing, Henderson's sister, chose Robert Beasley to be her guardian instead of her stepfather. Beasley took her part of the estate into his care after giving the security required.<sup>9</sup> Mary Standing accompanied her sister when the latter moved to Beasley's house. Although too young to choose her guardian, Mary wanted to remain with her sister rather than return to the care of her mother and stepfather. Therefore, in April, 1744, Beasley asked the Chowan Court to appoint him Mary's guardian. The justices delayed their decision until the July term

<sup>5</sup> Chowan C. M., Jan., 1743/44; April, 1744.

<sup>6</sup> Division of the estate, Chowan County Papers, III, 113.

<sup>7</sup> Chowan C. M., July, 1744—April, 1745.

<sup>8</sup> The exact date is uncertain as court minutes for the period are lost.

<sup>9</sup> Chowan C. M., July, 1743—Jan., 1743/44.

so that Creasey could be given an opportunity to contest the appointment. In July the change was made, and the court ordered Beasley to take Mary's estate into his custody and give security for it.<sup>10</sup> Six months later Sarah Standing chose William Luten, Esq., to be her guardian, and the Chowan Court consented to the change. The following July the justices appointed Luten to be the guardian of Mary as well.<sup>11</sup> In these transactions the Chowan Court was exercising its power under the act of 1715 to grant letters of tuition and guardianship to the persons they thought proper.<sup>12</sup>

The court required each guardian it appointed to post a bond for the faithful performance of the obligations attached to the office. The amount of security required varied according to the value of the estate the guardian was to take into possession. The Chowan Court specified only fifty pounds for Richard Haughton as guardian of Mary Haughton,<sup>13</sup> but the Bertie Court required three thousand pounds of Ruth Baker for her son John.<sup>14</sup>

As soon as a guardian qualified by posting his bond, he was expected to take his ward's person and estate under his care. He fed, clothed, and educated the orphan from the income of the latter's estate. The guardian kept an account of the property he received in trust and the disbursements he made. Like an executor, he sold any perishable part at public auction after obtaining a court order. When the ward became of age, the guardian gave him the estate he had administered. If a girl married before she became twenty-one, her guardian turned her estate over to her husband. When a guardian returned his ward's estate, the guardian rendered up all livestock "in kind received according to the Age & number" when he had received them, delivered all slaves and their increase, mortality excepted, and paid all money which came from the parent's estate or had been acquired from the sale or profits of the orphan's possessions.<sup>15</sup>

Although the guardian was expected to support his ward from the income of the orphan's estate, the county court had the authority to inspect the accounts and to decide what expenses were

<sup>10</sup> Chowan C. M., April, July, 1744; Chowan County Papers, III, 109. For a similar action, see Craven C. M., Sept., 1749.

<sup>11</sup> Chowan C. M., Jan., 1744/45; July, 1745; Chowan County Papers, III, 93.

<sup>12</sup> S. R., XXIII, 70 (c. 49).

<sup>13</sup> Chowan C. M., April, 1745.

<sup>14</sup> Bertie C. M., May, 1740.

<sup>15</sup> S. R., XXIII, 70-71 (1715, c. 49).

reasonable. This meant that regardless of the amount of income from an estate the guardian was expected to use no larger share than was sufficient to provide adequate care for his ward. On the other hand, when the income from an orphan's estate was small, a court occasionally authorized the guardian to draw upon the estate itself. The Craven Court permitted a guardian to charge three pounds per year against the principal of David Fonvielle's estate for his "schooling & diet."<sup>16</sup>

Although in most civil actions the county court's jurisdiction was limited to those arising under common law, where orphans were concerned the court's authority extended to cases of equity.<sup>17</sup> Represented by the attorney James Craven, Elizabeth and Mary McDowall, orphans of Charles McDowall, petitioned the Chowan Court for remedy against the neglect they had suffered at the hands of their mother, Elizabeth, and her second husband, William Rhoades. The daughters claimed that they had not received proper "Cloathing, Maintenance, and Education" and had been obliged to support themselves by their own industry. Since by law there was no action the daughters could bring against their mother and stepfather, the girls asked that the court require a satisfactory accounting of their inheritance.<sup>18</sup>

At the expiration of a guardianship the orphan frequently needed a court order for him to obtain his estate. The Craven Court granted such an order so that John Simons, having become twenty-one, could obtain his estate from the executors who held it.<sup>19</sup> William Hoshea obtained an order from the Perquimans Court for the estate of Sarah Trumbull, his recent bride, from the hands of James Parrishaw, her guardian.<sup>20</sup> Lewis Bond, the guardian of his sister Mary, requested an order from the Chowan Court for the delivery of the remainder of her estate in her step-

<sup>16</sup> Craven C. M., Dec., 1741.

<sup>17</sup> The commission of the peace authorized the court "to try all causes pertaining to orphans & their Estates . . . that shall by Information Plaint or by any other Lawfull ways or means be brought before you" (Commission dated March 6, 1738/39, Pasquotank Justices Appointed, 1728-1774). This broad power had been included in the commissions as early as 1699 (Chowan County Papers, I, 12). The provision was included in the court act of 1746 (S. R., XXIII, 263 [c. 2]).

<sup>18</sup> Chowan County Papers, IV, 135, 136. Also see Chowan C. M., Jan., 1741/42; Craven C. M., June, 1742.

<sup>19</sup> Craven C. M., June, 1746.

<sup>20</sup> Perquimans C. M., Jan., 1738/39.

father's possession so that he, Lewis, could deliver it to Mary's husband.<sup>21</sup>

Although the county court preferred to place an orphan under the care of a guardian, it oftentimes had to rely on the alternative—binding the orphan out as an apprentice. A choice between the two dispositions occurred in Bertie during 1741. After the death of George Jones, Henry Averit had taken Jones's son, Elisha, into his home. In May, Averit requested the Bertie Court that the orphan be apprenticed to him or that he be reimbursed for what he had spent caring for the boy. The justices ordered Elisha to remain with Averit until August, at which time they would authorize the apprenticeship unless one of the boy's relatives paid Averit for his board and lodging and agreed to serve as his guardian. As no volunteer appeared in August, the court apprenticed Elisha to Averit.<sup>22</sup>

During a court's vacation the immediate and temporary disposition of orphans was the duty of the parish vestry as part of their responsibility in caring for the poor. In May, 1749, the vestry of St. John's Parish, Carteret County, found themselves burdened with the three orphans of Daniel Linyard and his wife. As the eldest was sick, the vestry ordered that someone be found to nurse her. The charge would be borne by the parish, but it was to be repaid from the estate. For this purpose the church wardens were ordered to take into their hands the property of the Linyards and return an inventory to the vestry. Until the next court the vestry placed the second daughter under the care of John Shackelford and assigned the youngest daughter to Richard Rustall, both vestrymen.<sup>23</sup>

In the selection of masters and mistresses for impoverished orphans the county court deferred to the wishes of relatives or friends. The justices also endeavored to respect any known wish of the deceased parents. In binding out of the second daughter of Daniel Linyard to John Shackelford, the Carteret Court was not only continuing the arrangement made by the local vestry but also granting a request of the girl's mother.<sup>24</sup> The Chowan Court similarly

<sup>21</sup> Chowan County Papers, III, 58.

<sup>22</sup> Bertie C. M., May, 1741; May, 1742.

<sup>23</sup> Vestry Minutes, May, 1749, Carteret County Records, Vestry Book, St. John's Parish, Beaufort, I, fol. 13.

<sup>24</sup> Carteret C. M., June, 1749. The family name appears as "Lynard" in the court minutes. At the June term the justices bound the youngest daughter to Edward Shepard instead of Rustall.



apprenticed Arthur L. Port to William Badham, Esq., upon information that the boy's mother had requested the disposition before she died.<sup>25</sup> In general, the court usually selected for the master or mistress the person who had brought the orphan into court. This policy led to the choice of these people who already knew and had an interest in the child. In each case, however, the court reserved for itself the freedom to decide. At the March term of the New Hanover court in 1740/41 Rebecca Perry sought to have the justices bind to her care William Pigfoot, a twelve-year-old orphan she had brought into court. Upon due consideration the court thought it better to apprentice the boy to Benjamin Fussell to learn carpentry. Nevertheless, in making this decision the justices ordered Fussell to pay Rebecca £22 10s. for her expense in taking care of William.<sup>26</sup>

Children who had reached the age of fourteen before they were bound out had the same privilege of choosing a master that the wealthier orphans had in selecting guardians.<sup>27</sup> As with guardians, the person chosen had the right to accept or refuse the responsibility. But unlike orphans under the age of fourteen for whom the court appointed guardians, a youth bound as an apprentice at an earlier age could not change masters on reaching fourteen.

The bond, or indenture, of apprenticeship contained the obligations of both orphan and master. In binding William Dixon to James Worden, "planter," in January, 1740/41, the Chowan Court specified that the youth should serve his master "in all Lawfull Business according to his power wit & ability and Shall honestly Orderly and Obediently in all things demean and behave himself towards his Said Master and all his" until William attained the age of twenty-one. As the master, Worden agreed to teach the youth "to read write & Cypher and also the Art or Mistry of a Husbandman or planter which he now useth." During the apprenticeship the master was to supply the boy with "good & Sufficient meat Drink & apparel Washing & Lodging & all Other things Necessary." At the end of the apprenticeship Worden was to furnish the youth with the freedom dues of a servant.<sup>28</sup> Under an act of 1715 the freedom dues were three barrels of corn and two new suits of

<sup>25</sup> Chowan C. M., Oct., 1733.

<sup>26</sup> New Hanover C. M., March, 1740/41.

<sup>27</sup> Onslow C. M., July, 1743; Craven C. M., Sept., 1740.

<sup>28</sup> Chowan C. M., Jan., 1740/41.



apparel. In lieu of one of the suits the master could substitute a gun if his servant or apprentice were a man.<sup>29</sup> In 1741 the dues became three pounds, proclamation money, and one suit of clothing.<sup>30</sup>

When an orphan apprentice possessed a small estate, the court required the master to take it into his possession and to give security for its administration during the apprenticeship and for its restitution when the orphan completed his training. The Chowan Court required the security of one hundred pounds, current money, from Thomas Wood when he took ten-year-old Samuel Johnston as an apprentice weaver in 1743.<sup>31</sup>

Unless the court established a definite number of years for an apprenticeship, the term of service for a male orphan expired when he became twenty-one. When the court prescribed a specific number of years for an apprenticeship, it endeavored to have the apprenticeship conclude before the orphan's twenty-second birthday. The Perquimans Court had this intention when it bound James Smith to Richard Wallace for a term of five years as an apprentice shoemaker.<sup>32</sup>

Although the apprenticing of orphans was designed to relieve the parish and county of their care, the practice also had a humanitarian purpose. The children were trained to earn their livelihood. The trades most often taught were those of the blacksmith, carpenter, cooper, farmer, sailor, sailmaker, sawyer, shoemaker, tailor, and weaver. Masters also provided some schooling for their apprentices, a minimum being the ability "to Read the Bible to write & cypher as far as the Rule of three directs."<sup>33</sup>

Although by custom a master usually agreed to give the orphan the freedom dues of a servant at the completion of his apprenticeship, the court could authorize a different settlement. John Hart agreed to provide Thomas Foxall with two cows and their calves.<sup>34</sup> James Morgan was to supply his apprentice, John Nixon, with

<sup>29</sup> S. R., XXIII, 63 (c. 46).

<sup>30</sup> S. R., XXIII, 196 (c. 24).

<sup>31</sup> Chowan C. M., April, 1743. The New Hanover Court specified an equal amount of security from Peter Cliff (New Hanover C. M., March, 1741/42).

<sup>32</sup> Bond dated July, 1742, Perquimans Court Papers, Deeds, Bonds, etc., 1709-1831. The Chowan Court bound another James Smith to John Smith as a blacksmith in 1742 for a term of ten years (Chowan C. M., April, 1742).

<sup>33</sup> Craven C. M., March, 1740/41.

<sup>34</sup> Bertie C. M., May, 1734.

one new suit of good apparel, a new set of cooper's tools, and a new set of truss hoops.<sup>35</sup> In agreeing to train Stephen Blackmen, Theophilus Williams promised him a hundred acres of land.<sup>36</sup> George Winberry took David Morgan into his service as an apprentice weaver and agreed "to provide at the day of his Freedom Good Loom Harniss Slay [sley] and All other Accutremments thereunto Belonging And also . . . [to] pay to said apprentice Two New Good Suits of Wearing Apparel (to witt) Shoes Stockens Hatts Shirts Coats Britches and Jackets."<sup>37</sup> In obtaining the services of Thomas Bloy as an apprentice in September, 1731, John Handcock agreed to take the youth for a term of four years. He pledged himself to give Thomas a heifer in the spring and her increase during the apprenticeship. Besides this and the usual food, clothes, and lodging, Handcock agreed to provide one year's schooling and to pay Thomas ten pounds when his time expired.<sup>38</sup>

In binding out girls the courts set varying times for the termination of the apprenticeship. The Chowan Court bound Mary Simpson to George Lysle until she arrived "at the Age of Sixteen or day of Marriage."<sup>39</sup> Although this was the most frequent term, the Onslow Court bound several girls until they were eighteen or married,<sup>40</sup> and the Craven Court bound Lucie Pringle, by her consent, to William Bryan until she became seventeen.<sup>41</sup>

The master and mistresses to whom a court apprenticed orphan girls agreed to provide them with instruction and training in domestic pursuits. James Briggs obligated himself to have Elizabeth Deputy taught to read, write, knit, sew, spin, and cook.<sup>42</sup> In this indenture the Chowan Court included more of the domestic skills than the other courts usually mentioned in their bonds. The justices of Onslow required John Williams merely to teach Sarah

<sup>35</sup> Onslow C. M., April, 1734.

<sup>36</sup> Bertie C. M., Feb., 1736/37.

<sup>37</sup> Bond dated Oct., 13, 1742, Pasquotank Apprentice Indentures, 1717-1779.

<sup>38</sup> Craven C. M., Sept., 1731.

<sup>39</sup> Chowan C. M., April, 1732.

<sup>40</sup> Onslow C. M., Jan., 1733/34; April, 1734.

<sup>41</sup> Craven C. M., Sept., 1740. Richard B. Morris's statement in *Government and Labor in Early America* (New York, 1946), p. 375, that in North Carolina girls were usually bound until the age of eighteen is not true for the period before 1750. Sixteen was the age usually specified by the courts (Chowan C. M., Sept. [Oct.], 1719, *North Carolina Historical and Genealogical Register*, I [1900], 155; Bertie C. M., Feb., 1733/34; Chowan C. M., Oct., 1741; Jan., 1743/44; Craven C. M., Dec., 1730).

<sup>42</sup> Chowan C. M., Oct., 1741.

and Judith Clark to read in the Bible.<sup>43</sup> In having Ann Cartwright bound to him by the Craven Court George Whitetaker agreed to teach her "to Read well in the bible and to lern her to be a sufficient Seamster as to Make her own Lyving."<sup>44</sup> During Lucie Pringle's three-year apprenticeship William Bryan was to provide her with six-months' schooling.<sup>45</sup>

Regardless of the disposition a court made of orphans, the justices retained some authority over the children. An inspection was one of their means of assuring that guardians and masters were providing the proper care and training. In 1742 the Craven Court required every master and mistress within the county to bring their orphans to the December court or otherwise bring a certificate from a neighboring justice to satisfy the court of the orphans' welfare.<sup>46</sup> The Chowan Court required all guardians, masters, and mistresses to appear at their April, 1743, term to account for the care they were giving the children.<sup>47</sup>

Although in most counties the court performed such supervision only at irregular intervals, the inspections in Onslow were held annually for several years.<sup>48</sup> The Onslow Court prepared for this control in July, 1735. The justices ordered "that Publick Advertisement be given in Obedience to His Majesties Comition that all Persons that have Orphans in their Care may give an accot: to the Next Court & if any Estate to give an accot: of the Value of their Estates and who is their Guardians and what Security is given."<sup>49</sup>

In 1745 the justices of Craven County became aware of their neglect in the supervision of the care of orphans. After failing to maintain a current list of orphans, the Craven Court ordered its clerk to search the records for the last seven years to obtain a list of masters and mistresses.<sup>50</sup>

At any term a county court was receptive to complaints from orphans of mistreatment they suffered. Hearing the complaint of Mary Knight that her mistress, Mary Gallant, has "immoderately" beaten and abused her, the New Hanover Court required the mistress to give thirty pounds, proclamation money, security for twelve months that she would "perform her part of the Covenant

<sup>43</sup> Onslow C. M., Jan., 1733/34.

<sup>45</sup> Craven C. M., Sept., 1740.

<sup>47</sup> Chowan C. M., Jan., 1742/43.

<sup>49</sup> Onslow C. M., July, 1735.

<sup>44</sup> Craven C. M., Dec., 1730.

<sup>46</sup> Craven C. M., Sept., 1742.

<sup>48</sup> Onslow C. M., 1741-1746.

<sup>50</sup> Craven C. M., Sept., 1745.

in the Indenture given the Court."<sup>51</sup> The Chowan Court adopted a different course after hearing the complaint of James and William Stewart against their master John Cleland. The justices released the boys from their apprenticeship to Cleland and bound them to John Campbell to become seamen.<sup>52</sup> By maintaining such a responsive ear to these complaints the courts were able to safeguard the orphans' interests.

<sup>51</sup> New Hanover C. M., June, 1741.

<sup>52</sup> Chowan C. M., July, 1747.

# Jurisdiction of the Court

## Regulation of Voluntary Servitude and of Slavery

The acts of 1715 and 1741 pertaining to servants and slaves gave the justices of the peace jurisdiction over their welfare and conduct. Individually, the justices heard the complaints of servants against their masters, determined the amount of corporal punishment that could be inflicted on servants or slaves for certain offenses, and assisted in the return of runaway slaves. Sitting as members of the county court, the justices wielded even greater power. The court enforced the performance of obligations of both parties to an indenture and determined whether a person was bond or free. Sitting with slave-owning freeholders, the justices of the county formed a special tribunal to provide summary justice for the criminal actions of slaves.<sup>1</sup>

Two types of white bound labor existed in North Carolina, the apprentice and the servant. In some respects they resembled each other. During the term specified by the bond or indenture, the master-servant relationship was in effect for each type. Furthermore, the apprentice and servant each owed the master his services and allegiance and, in return, received sustenance, clothing, lodging, and termination dues. Although an apprentice might be considered as one kind of servant, two basic differences existed between these two types of labor. One distinction was that the apprentice was a minor bound to a particular master and mistress, and his service was not transferable; but the servant, on the other hand, could be a minor or an adult and was a chattel of his master during

<sup>1</sup> S. R., XXIII, 62-66 (1715, c. 46), 191-204 (1741, c. 24). The second act repealed the first.



the term of his service. As such, the servant could be sold or given away; and if his master died, he remained bound to the heirs during the remainder of his term. The other distinguishing difference between the apprentice and servant was the duty of the master to train the apprentice, but not the servant, in some trade. To this was often coupled the requirement of teaching the apprentice to "read, write, and cypher."

A parent could apprentice his or her child without an order from a court. Isaac Coduging's contract of apprenticeship to Richard Rustall and his wife reveals the terms of an apprenticeship entered independently of a court. Isaac, his mother, and the Rustalls signed the indenture, and the procedure was witnessed by three other people. With his mother's consent Isaac agreed to serve the Rustalls for four years, "During all which Time his Master and Mistress Commands or Either of theirs [he] will Lawfully obey their Secrets keep he is not to use Gaming or Contract Matrimony During the sd Terme But to Behave himself in all Things as a Faithful Apprentice ought to do." The master agreed to "find him Good and Sufficient meat drink washing and Lodging Apparill and all necessarys fitting for Such apprentice during ye sd Term, and . . . to Instruct Teach or Cause to be Instructed or Taught the aforesd Isaac Coduging in the Art of a Coopers trade to make a Good and merchantable Barrell workeman Like." In a "Memorandum" added to the indenture the Rustalls promised to give their apprentice at the end of his term "a Set of Coopers Tools and a Good Suit of Apparil."<sup>2</sup>

There are some significant differences between the terms of Isaac Coduging's contract and those of William Dixon's bond which the Chowan Court prepared when it bound him to James Worden as an orphan apprentice.<sup>3</sup> One of the most evident is the omission in Isaac's bond of any obligation on the master's part to teach the apprentice reading, writing, and arithmetic, a requirement which the court always included. Along with this is the recording of the requirements of Isaac's conduct in greater detail. Because the county court did not participate in the drawing up of Isaac's

<sup>2</sup> Indenture dated April 17, 1732, Carteret County Records, Deeds, 1721-1740. A widow could have a court bind her orphan children and have it supervise their master's training. Genn Garret, a widow, had the Chowan Court, in July, 1743, bind her two sons, ages five and three, to Humphrey Garret (Chowan C. M., July, 1743).

<sup>3</sup> *Supra*, p. 80.

contract, Rustall was not obliged to bring his apprentice before the court for its approval of his care and training as was the case with Worden. It was true, however, that if Isaac made any complaint, the court would investigate Rustall's conduct.

The county court viewed the indentures of those apprentices who were bound by their parents in much the same way that it viewed bonds of servants. Both the apprentice so bound and the person voluntarily entering servitude could complete their contracts without any action of the court. These apprentices and servants had the proof of witnesses rather than the records of the court to substantiate the terms of their indentures. However, an indenture of either type could be recorded by court order in the manner of a deed if a request were made.

In many instances the child who was apprenticed by a parent was illegitimate. The action of the Onslow Court in 1734 not only recognized this method of disposing of illegitimate children but encouraged it. The justices required security of a hundred pounds, current money, of John Cooper and Mary Pope that they would keep their illegitimate child from coming on the charge of the precinct until the child reached the age of fourteen or was bound out as an apprentice.<sup>4</sup>

Since servants, unlike apprentices, could not expect to obtain any special training, the voluntary entrance into servitude by persons residing in North Carolina might best be regarded as an effort on their part to obtain security. The indenture of Grace Roberson to James Winright, Esq., of Carteret Precinct, contains the obligations a servant assumed. For a term of three years Grace agreed to obey "her sd Master and Mistress' Lawful commands . . . their Secrets keep and in all things to Behave her Self as a Faithful Apprentice or Servant." Winright was to provide the usual "necessaries fit for such apprentice or Servant According to the Custom of sd Country and at ye Expiration of ye afforesd Terme to do such other further things according to ye Custom of this Country and as other Servants in Such Cases are usually Provided for and Allowed."<sup>5</sup>

A special type of servant was the illegitimate mulatto child. Under the act of 1715 the church wardens had the authority to bind mulatto children born to white mothers as servants until

<sup>4</sup> Onslow C. M., July, 1734.

<sup>5</sup> Indenture dated April 20, 1732, Carteret County Records, Deeds, 1721-1740.

they attained the age of thirty-one. The county court had this responsibility after 1741. The terms of such indentures resembled those of Grace Roberson above and did not regularly provide for any specific training, as was the case with all apprentices.<sup>6</sup>

With respect to white indentured servants, or "Christian servants" as they were often called, the county courts had two chief concerns. The first was supervision of the performance of the obligations of both master and servant as it was prescribed in the bond. The second was the determination of whether or not a person was properly bound by an indenture.

Any servant could complain before the nearest justice of the peace of the treatment he received from his master. If the magistrate found just cause, he was required to bind over the master to appear at the next precinct or county court to answer the servant's charges. When advisable, the justice also required security from the master not to abuse the servant in the meantime. Servants could also complain directly to the county court.<sup>7</sup>

During the term of an indenture the servant's complaint was normally directed against the master's discipline. In January, 1731/32, Matilda Sheriff complained to the Chowan Court of the treatment she had received from her master, Dr. George Allen. The justices ordered Allen to give security of fifty pounds "not to Exceed ye bounds of moderation in correcting her." Until he gave the bond, the court placed Matilda "under the Protection of the Marshal of this Court." In July, Matilda returned to court complaining that she had again been "barbarously treated" by her master. On this occasion the justices ordered that she be sold at public vendue to the highest bidder for the remaining part of the time she had to serve. Upon receiving the money from the sale, the clerk was to deduct the charges and pay any remainder to Allen.<sup>8</sup>

The courts' actions on servants' complaints varied greatly. Upon the charge of Benjamin West presented in court by his attorney, John Hodgson, that his master Henry Reynolds had "cruelly & severely treated" him and had not provided his "Necessaries," the

<sup>6</sup> S. R., XXIII, 65 (1715, c. 46), 195 (1741, c. 24); indenture dated Jan. 31, 1735/36, Chowan County Papers, I, 86; indenture dated July 10, 1746, Pasquotank Apprentice Indentures, 1717-1779.

<sup>7</sup> S. R., XXIII, 63 (1715, c. 46), 192 (1741, c. 24).

<sup>8</sup> Chowan C. M., Jan., 1731/32; July, 1732. The act of 1741 incorporated a provision for such a sale upon the second complaint of a servant (S. R., XXIII, 192 [c. 24]).

Pasquotank Court discharged West from servitude.<sup>9</sup> Mary Coogan, a servant of Richard Lovett, complained to the Craven Court that her master and mistress had "much abused her by beating her & want of clothing without just provocation." The court heard the allegations of both parties. Upon examining the servant to discover if the beatings had injured her, the justices considered that she had not been "immoderately Corrected." Their orders were that she should return to her master's service.<sup>10</sup> In January, 1735/36, Mable Ryley complained to the Onslow Court of the "rigorous abuse" she suffered at the hands of her master, Edward Howard. The court's order was that Howard should not "correct sd Mable for any Triviall offense but for such offences of ye sd Mable as shall be Deemed Cullpable by the next Magistrate."<sup>11</sup> The Carteret Court's hearing of the complaints of Walterman Gibbs extended over a period of several months. In December, 1742, Gibbs complained that James Salter, his master, "hath used him very ill" by beating him with mill sticks, fire tongs, and the back of a sword. John Styring came before the justices and informed them that he had heard Salter declare he would poison Gibbs if he could obtain some poison. The court continued its hearing on the complaint until the next term and committed Gibbs to the care of Resolve Waldron in the meantime. In March, John Styring repeated his testimony concerning Salter's threat to poison Gibbs. George Styring, another witness, stated under oath that he had seen Salter strike the servant twice within the past two years. After giving consideration to the matter, the court ordered that Gibbs return to his master and that Salter "be accountable as the law directs." Salter had to pay the cost of the hearings.<sup>12</sup>

Indentured servants frequently complained to a county court that they were being illegally detained. Inasmuch as white servitude was based upon a contract, the courts required proof of the written agreements before recognizing the master's right over his servants. Bridget Clansey petitioned the Onslow Court in 1735 for her freedom. She maintained that Captain David Tilden and Ralph Eves had unlawfully sold her for a servant. The justices ordered a summons for the appearance in January of these two men and witnesses. When no one appeared to show proof of

<sup>9</sup> Pasquotank C. M., Jan., 1746/47.

<sup>10</sup> Craven C. M., Dec., 1746.

<sup>11</sup> Onslow C. M., Jan., 1735/36.

<sup>12</sup> Carteret C. M., Dec., 1742; March, 1742/43.



Bridget's bondage, the court determined that she was a free person.<sup>13</sup>

Unless a master had the bond of indenture in his own hands or had it recorded by the register, he might forfeit his servant's services.<sup>14</sup> He risked annulment of the contract in letting the indenture come into the hands of his servant. A case before the Chowan Court illustrates this. According to the testimony given before the court, Mary Collins encountered Robert Parks, her master, at an inn one day. When he attempted to order her about, she declared that he had no authority over her, and if he did, he would have to prove it. When Parks produced her indenture to win his point, she asked to see it, and he handed it to her. As soon as she had the document in her hands, she ran out of the inn and boarded a nearby ship, where she destroyed the indenture. Upon hearing this evidence the court decided that Parks had "Voluntarily Delivered up to the Said Mary Collins her Indenture and her Servitude thereon." The court was, therefore, of the opinion that she should not be detained as a servant.<sup>15</sup>

Under a provision of an act of 1715 "Christian" servants above the age of sixteen imported into North Carolina without indentures were to be bound for only five years.<sup>16</sup> At the Bertie Court in February, 1735/36, Francis Ellison sought his freedom under this law. He told the court that he had served James Young five years from the time he had arrived in the colony from Virginia. In an effort to retain his servant, Young produced an indenture specifying seven years' service. Ellison argued that the bond was surreptitious. The justices of the court had to pass on the validity of the indenture. They refused to accept it as binding. Because Ellison had served five years, the court ruled that he should be free from further servitude.<sup>17</sup>

When masters did not release their servants at the expiration of their terms, the servants had to depend upon a court's order

<sup>13</sup> Onslow C. M., Jan., 1735/36.

<sup>14</sup> In case of the accidental loss or destruction of an indenture a master could request the court to have the contract redrawn according to the original terms. In reconstructing the indenture the court could accept the testimony of anyone who had read or heard read its contents.

<sup>15</sup> Chowan C. M., Jan., 1743/44; July, 1745; Chowan County Papers, II, 102-104, 106, 125.

<sup>16</sup> S. R., XXIII, 62 (c. 46). Those under this age could be made to serve until they became twenty-two.

<sup>17</sup> Bertie C. M., Feb., 1735/36.



to obtain their freedom. Ann Power petitioned the Bertie Court in May, 1737, for the freedom of her daughter, Sarah, from the service of John Power. The mother showed the court a counterpart of the indenture proving that Sarah had been bound only until May 1. The court ordered that John Power surrender the girl to her mother immediately or be confined in jail by the marshal without bail until he complied.<sup>18</sup> In 1742 the Bertie Court heard Valentine Bell's charge that John Fitz was detaining him illegally as a servant. To give Fitz an opportunity to answer the charge, the court postponed further action until the next court. At the same time the justices ordered that during the interval Bell should be hired out to someone else for thirty shillings, proclamation money. James Douglas agreed to hire Bell. When Fitz failed to appear at the next court, the justices discharged Bell and permitted him to receive his earnings.<sup>19</sup>

Once a servant gained his freedom, he often found it necessary to seek the court's assistance in obtaining his termination dues. As soon as Hannah Skinner's master, Robert Warren, had turned in her indenture to the Bertie clerk in 1733, John Hodgson as Hannah's attorney prayed the court for the allowance of her freedom dues. The justices directed Warren to pay the woman two new suits of apparel, or five pounds in lieu thereof, and three barrels of corn. Warren made the payment immediately, preferring to give the money in place of the apparel.<sup>20</sup> In 1749 Mary Coogan's petition to the Carteret Court for her freedom dues from John Hackelford, her late master, brought her the three pounds, proclamation money, and the suit of clothes which were the freedom dues prescribed in the act of 1741.<sup>21</sup>

Masters also could bring before the county court complaints against their servants. Their most common grievances were that they had incurred a loss of services and undue expense when one or more of their servants had run away or when a maidservant had given birth to a child. After the passage of an act in 1741, masters could also obtain satisfaction for their trouble in going to court because of the groundless complaints of their servants. Two other types of misconduct described in the 1741 act as grounds for com-

<sup>18</sup> Bertie C. M., May, 1737.

<sup>19</sup> Bertie C. M., May, Aug., 1742. For a similar instance, see Bertie C. M., May, 1733.

<sup>20</sup> Bertie C. M., Aug., 1737; S. R., XXIII, 63 (1715, c. 46).

<sup>21</sup> Carteret C. M., June, 1749; S. R., XXIII, 196 (c. 24).

plaints were the wilful deeds of servants resulting in self-injury or sickness and the deliberate misuse or disposal of the master's property.<sup>22</sup> Upon a decision in favor of the master in any of these instances the remedy granted by the court was an extension of the term of the servant's service.<sup>23</sup>

In October, 1744, John Campbell petitioned the Chowan Court to extend the terms of Henry and Elizabeth Mayer, two of his indentured servants who had run away. They were absent sixteen months, and Campbell was at some expense in bringing them back. The justices extended the Mayers' term of servitude thirty-five months. Thirty-two of the months were the double penalty for the time of absence, and the three remaining months were to compensate for Campbell's expenses.<sup>24</sup>

The act of 1715 provided that any servant woman giving birth to a child during her term of servitude was subject to having her term of service extended two years in addition to any judgment against her for fornication. In 1741 the penalty was reduced to one year.<sup>25</sup> Unless the master was the child's father, the county court received the complaint from the master and ordered the extra service.<sup>26</sup> When the master was the father, the church wardens assumed possession of the servant and sold her for the remainder of her term and the prescribed extra period for her offense. The money realized from such a sale was for the use of the parish. If a white servant woman had a child by a Negro, mulatto, or Indian, the county court first extended her term of service to her master, and then, upon the expiration of this service, the church wardens sold her for two additional years' service. Until 1741, however, the servant could pay a six-pound fine in lieu of being sold by the church wardens for having borne a mulatto child.<sup>27</sup>

<sup>22</sup> A master could also bring an action in the county court against anyone trading with his servants or slaves without his permission. The judgment in such action was for treble the value of the goods and a penalty besides. This provision was a part of the 1715 act.

<sup>23</sup> *S. R.*, XXIII, 62-65 (1715, c. 46), 191-195 (1741, c. 24).

<sup>24</sup> Chowan C. M., Oct., 1744. For an earlier example, see Bertie C. M. Nov., 1724.

<sup>25</sup> Servants pregnant at the time they entered the colony were exempted from this penalty.

<sup>26</sup> Onslow C. M., Oct., 1736; Bertie C. M., Feb., 1739/40; Nov., 1743.

<sup>27</sup> *S. R.*, XXIII, 64-65 (1715, c. 46), 195 (1741, c. 24). Under the act of 1715 a free white woman giving birth to mulatto children was also subject to sale or fine.

The application of a few of the provisions concerning illegitimate children are illustrated in the experiences of Christian Finny, a white servant woman. In December, 1736, George Cummins informed the Carteret Court that Christian had given birth to a mulatto child in November of the previous year. The court thereupon ordered that the mother and child "be dealt with according to act of assembly in that case made & provided."<sup>28</sup> Having no money to pay the fine due at the end of her two years of extra servitude, Christian was sold by the church wardens to Cary Godbe for two more years. Before this time expired, Christian gave birth to another mulatto child. Because of this, Godbe was able to have her service to him extended the prescribed two years. In June, 1741, during Christian's third year of servitude to Godbe, she confessed to an indictment of a Carteret grand jury that she was again "big with child."<sup>29</sup> The following June the court convicted her of fornication and sentenced her to receive fifteen lashes on her bare back. Since her last mulatto child was born after the act of 1741 became effective, Godbe obtained an extension of only one year to Christian's term of service.<sup>30</sup>

As Christian Finny's fifth year as a servant to Cary Godbe progressed, the vestry of St. John's Parish prepared to take the measures prescribed for them by law. They summoned Christian to appear before them. As Christian had been "lawfully convicted of bringing forth two mulatto children," the vestry, in June, 1743, ordered the church wardens to arrange for her immediate sale. She was to be sold at public vendue for two years' service. In ordering the sale the vestry specified that her buyer must give security in the sum of one hundred pounds that she would not cohabit with a Negro belonging to Cary Godbe or even go to Godbe's house.<sup>31</sup>

At the county court in June, 1743, the justices decided to investigate during their next term the relations between Christian and Godbe's slave. For this purpose they summoned Godbe. When Godbe came before the court in September, he brought with him Christian's mulatto son born in July, 1739. After the justices had

<sup>28</sup> Carteret C. M., Dec., 1736.

<sup>29</sup> Carteret Court Dockets, June, 1741.

<sup>30</sup> Carteret Court Dockets, June, 1742.

<sup>31</sup> Vestry Minutes, April, 1743, Carteret County Records, Vestry Book, St. John's Parish, Beaufort, I, fol. 3.

questioned Godbe about Christian, they bound her son to Godbe until he became thirty-one.<sup>32</sup>

The church wardens obeyed the orders of the vestry so promptly that Christian was sold before the term of her service to Godbe expired. To obtain satisfaction for the loss of three months of Christian's service Godbe employed William Heritage to plead the matter at the Carteret Court. Heritage was not successful. The action continued on the docket until March, 1744/45, and Godbe's only recompense was that he was "quit of all fees."<sup>33</sup>

Upon Christian's sale in 1743 her new master was Daniel Rees. By paying the fees of ten pounds for Christian's trial held in 1742, Rees obtained from the Carteret Court a five-month extension of her servitude.<sup>34</sup> In December, 1745, Christian Finny appeared at the Carteret Court and applied for her freedom. In taking the petition under consideration, the justices began an inquiry. When they found that she had had another mulatto child, they ordered her to continue serving Rees for one more year.<sup>35</sup>

Whereas the county court was interested in both the welfare and conduct of servants, the court was primarily concerned only with the behavior of slaves. The laws of 1715 and 1741 established no means for a slave to obtain redress for the mistreatment or neglect he received from his master. On the other hand, the justices of the county, sitting with three or four slaveowning freeholders as a special court, had the authority to try all crimes and misdemeanors of slaves and to impose capital punishment.

The county court had cognizance of complaints of persons held in slavery unlawfully. Any person who had been a free person at the time he was imported into the colony but was later kept or sold as a slave could complain to any justice of the peace. The justice was to summon the pretended owner to appear before him for a hearing. The justice was expected to make a record of the examination and to bind over both parties for their appearance at the next county court.<sup>36</sup> After such procedure, James and Peter Black came before the Craven Court in June, 1745, and asked for their freedom. They maintained that though they were free

<sup>32</sup> Carteret C. M., Sept., 1743.

<sup>33</sup> Carteret C. M., Dec., 1743—March, 1744/45.

<sup>34</sup> Carteret C. M., June, 1744.

<sup>35</sup> Carteret C. M., Dec., 1745. I have found no further mention of Christian in the court minutes or vestry book.

<sup>36</sup> S. R., XXIII, 196 (1741, c. 24).



Negroes in Essex County, Virginia, James Hatch had brought them into North Carolina and had sold them as slaves to Edwin Handcock who now was holding them as such. In considering the complaint, the justices heard the evidence and argument on both sides. The court concluded that the Negroes were free persons and that they were "at liberty from service" to anyone.<sup>37</sup>

The special courts authorized by the acts of 1715 and 1741 for the trial of the offenses of slaves had no scheduled terms nor fixed memberships. Under the earlier act the first justice of the commission appointed the time and place for the trial. He also issued a summons to three justices and three freeholders, all of whom had to own slaves in the precinct, to hear the case. In determining the matter they acted "according to their best Judgment & Discretion." The act of 1741 modified this procedure. Any one of the justices in the county had the authority to commit to the county jail a slave accused of crime. As soon as the sheriff certified the commitment to any justice, the latter was required to issue a summons for two or more other justices and four freeholders, qualified as before, to meet with him at the courthouse for the trial.<sup>38</sup>

The purpose of this special court was to provide quick and summary justice. In issuing a summons on January 10, 1731/32, for the trial of a Negro named Dick who belonged to William Reed, David Bailey specified that the justices and freeholders were to meet at the Pasquotank Precinct courthouse the following morning.<sup>39</sup> This speed was not unusual. Unless the slave ran away after committing his crime, he was usually sentenced within less than a week. At the trial the person making the complaint prosecuted his charge. If no prosecutor appeared, the court discharged the slave after proclamation had been made three times.<sup>40</sup> For evidence in the trial the court could take the confession of the slave, the oath of one or more credible witnesses, or such testimony of Negroes, mulattoes, or Indians, bond or free, as seemed convincing. The slave's owner or overseer could make any "just" defense he could for the accused as long as it did not relate "to any Formality in the Proceeding on the Tryal." No jury was used. If the court

<sup>37</sup> Craven C. M., June, 1745. For another example, see Craven C. M., Sept., 1749.

<sup>38</sup> S. R., XXIII, 64 (1715, c. 46), 202 (1741, c. 24); warrant dated Jan. 10, 1731/32, Pasquotank Bonds, Miscellaneous Materials, 1720-1861.

<sup>39</sup> Pasquotank Bonds, Miscellaneous Materials, 1720-1861.

<sup>40</sup> Craven C. M., April 10, 1740.



found the accused to be guilty, the court sentenced him to receive whatever punishment it felt the crime required and awarded execution thereon.<sup>41</sup>

A trial before a special court at the Pasquotank courthouse on February 22, 1741/42, illustrates the procedure. Three justices and four qualified freeholders were present and took the oath to give a true verdict and sentence according to the evidence. Scipio and Abraham, two Negro slaves belonging to Bartholemew Evans, were on trial. The charge against Scipio was that "on the 18th day of February Instant in the Night time at the Plantation of Mr. William Turner in the County afsaid [Scipio] Did break open the Storehouse of Mr. James Gregory—Merchant and there Feloniously did take & Carry away the Goods and Property of the Said James Gregory to the Value of Two Hundred pounds Current Bills." Although the record does not give the charges against Abraham, he was likely an accessory. During the court's examination Scipio confessed to the charge, and James Gregory declared under oath that the goods held as evidence were his. The court unanimously agreed to the verdict of "guilty." The judgment was "that Scipio shall suffer Death by being Hanged and that the Negro Abraham shall suffer Corporal punishment by haveing one Ear nailed to the Stocks & cut off and also shall have Fifty Nine Lashes well Laid on his bare back." Execution of this judgment was then ordered. Because slave owners were entitled to receive suitable allowances for slaves executed by the orders of a court, the justices and freeholders were required to make a valuation. In this instance, they adjudged Scipio to be worth two hundred pounds, current money. The court reported this figure to the Assembly so that Evans could secure compensation for his loss.<sup>42</sup>

In subsequent years special courts in Pasquotank County gave judgments of varying severity for the crimes of burglary and larceny. In June, 1743, a court tried two Negroes for taking "Sundry European Goods to the value of Four hundred pounds" from the storehouse of Alexander Jack. Upon their conviction, the court sentenced each Negro to have his right ear cut off and to receive

<sup>41</sup> S. R., XXIII, 202-203 (1741, c. 24).

<sup>42</sup> Pasquotank C. M., Feb. 22, 1741/42. By the act of 1715 the valuation paid the owner was to be raised by a poll tax on all the slaves in the government. This provision was replaced in 1741 by method of a direct payment from public funds (S. R., XXIII, 64 [1715, c. 46], 203 [1741, c. 24]).

sixty lashes on his bare back.<sup>43</sup> During the regular court session in January, 1746/47, four freeholders took their place on the bench to try two Negroes "for Breaking open the house of Elinor Miller . . . & stealing from thence a Quantity of Yarn to the Value of One Shilling Sterling." This crime brought the Negroes a sentence of thirty lashes each.<sup>44</sup> In November, 1748, Benjamin Baptist's Negro named Ben received a sentence of fifty lashes for drinking one dram of brandy belonging to John Pendleton.<sup>45</sup>

The judgments for other crimes also varied. For assaulting Elihu Anderson, his master, a Negro named Chance received one hundred lashes and had one of his ears cropped.<sup>46</sup> A special court in Craven tried a mulatto slave called Jack for murdering his master, Robert Pitts. The sentence was that the slave should be hanged until dead the next morning and that his head should then be severed from his body and stuck upon a pole.<sup>47</sup> For mismarking a hog belonging to Thomas Pendleton, Esq., a Pasquotank Court ordered that the slave be banished from the province within thirty days. The court required the owner, Mrs. Sarah Palin, to give five hundred pounds, proclamation money, security for the banishment.<sup>48</sup>

An act of 1741 assigned to the county court the authority to free slaves by granting licenses to their masters when the court deemed the act proper. Prior to 1741 masters were at liberty to give slaves their freedom as a reward for their "honest & Faithful service," but these former slaves were required to leave North Carolina within six months or to be sold by the county court to someone for five years who would give security to transport them out. The new law of 1741 established a procedure for freeing slaves who could then remain within the province. The basis was for "meritorious Services, to be adjudged and allowed of by the County Court."<sup>49</sup> The failure of the court minutes to record such an instance indicates that the practice was probably rare.

Although slaves were, in general, forbidden by law to be armed with guns or other weapons or to hunt in woods, a master could obtain from the county court a hunting license for one slave on

<sup>43</sup> Pasquotank C. M., June 8, 1743.      <sup>44</sup> Pasquotank C. M., Jan., 1746/47.

<sup>45</sup> Pasquotank C. M., Nov. 23, 1748.      <sup>46</sup> Pasquotank C. M., Aug. 23, 1745.

<sup>47</sup> Craven C. M., April 27, 1741. The slave's value was adjudged to be £200, current money.

<sup>48</sup> Pasquotank C. M., July 12, 1746.

<sup>49</sup> S. R., XXIII, 65 (1715, c. 46), 203-204 (1741, c. 24).

each of his plantations. Under this regulation of 1741 Major Enoch Ward came before the Carteret Court in March 1743/44, and asked the justices to issue a permit to his Negro named Sharper. With the court's approval the chairman signed the certificate which the slave was required to carry with him always.<sup>50</sup>

The court of the county in which the "public," or provincial, jail was located had concurrent jurisdiction with the General Court over the hiring out of runaway slaves who were confined to the public jail until claimed by their owners. Since the money realized from the hiring of runaways was applied to the payment of the fees and charges of their apprehension and confinement, the courts endeavored to obtain the highest returns. Hence at the December, 1747, term of the Craven Court the justices had George McCarthy return the Negro named Ross for whose services he was paying £7 10s. per month. The court then hired the slave to Joseph Balch for £9 per month. As a part of the terms, Balch agreed to deliver up the slave to his owner or to the sheriff whenever called upon.<sup>51</sup>

A slaveowner occasionally brought a civil action before a county court to recover damages he suffered from someone having illegal dealings with his slaves. Under the law a master could sue anyone who had traded with his slaves without permission or had persuaded or assisted them to run away. Thomas Stanton sued John Bornesby in the Pasquotank Court in 1700 for "Entertaining" one of his slaves.<sup>52</sup> Isaac Speight entered a suit against James Canaday at the May, 1744, term of the Bertie Court for persuading two of his Negro slaves to run away.<sup>53</sup> An owner could also enter an action against a person who killed or maimed his slave.<sup>54</sup>

<sup>50</sup> Craven C. M., March, 1743/44; S. R., XXIII, 201 (c. 24).

<sup>51</sup> Craven C. M., Dec., 1747; S. R., XXIII, 198-199 (1741, c. 24).

<sup>52</sup> Pasquotank Court Dockets, April, 1700.

<sup>53</sup> Warrant dated May 15, 1744, Bertie County Miscellaneous Papers.

<sup>54</sup> S. R., XXIII, 64 (1715, c. 46), 194, 196-197, 203 (1741, c. 24).

## CHAPTER VII

# Administrative Powers of the Court

## Public Buildings

The lack of public buildings in North Carolina during most of the Proprietary period hampered the efficient administration of law and justice. Without a capitol or any courthouses the Assembly and the courts had no settled location for their sessions. Of necessity they met in private homes and shifted from one house to another according to the accommodations offered. The public records also suffered for want of permanent quarters. Since the clerks and other officials used their homes for their offices, the records were often scattered. In the absence of prisons the marshal and his deputies were forced to rely upon makeshift arrangements for holding prisoners, and escapes were all too frequent. Efforts to remedy this lack of public buildings did not begin to produce results until the administration of Governor Charles Eden (1714-1722). After 1722 each precinct was expected to have at least a courthouse.<sup>1</sup>

The provincial government obtained some relief from the in-

<sup>1</sup> The Assembly made plans before the end of the seventeenth century for the erection of a provincial courthouse (*North Carolina Historical and Genealogical Register*, II [1901], 130; General Court Minutes, Nov., 1694; C. R., I, 429). The suspension of government during the "Cary Rebellion" from 1708 to 1711 followed by a year and a half of hostilities with the Tuscarora Indians delayed plans for erecting public buildings. For a description of conditions in North Carolina during this period, see C. R., I, xxvii-xxxi, 669-921, *passim*; Charles M. Andrews, *The Colonial Period of American History* (New Haven, 1934-1938), III, 260-266. Prior to 1715 the Assembly passed "An Act to promote the building a Court house to hold the Assembly in, at the fork of Queen Ann's Creek commonly called Matchacamak Creek in Chowan precinct." This law remained in force after the revival of 1715, but only the title has been preserved (S. R., XXIII, 95 [1715, c. 66]).



convenience of having no capitol with the completion of a "Public" or "General" courthouse on Queen Anne's Creek in Chowan Precinct in 1718. During the years which followed, this building was available for the meetings of the council, the Assembly, the General Court, and even the Chowan Precinct Court.<sup>2</sup>

In 1722 the Assembly ordered the erection of courthouses in every precinct so that the place for holding each local court could be definitely settled. For each precinct, the justices, or a majority of them, were to purchase an acre of land for the site and, within six months, were to engage workmen to build the courthouse. The minimum dimensions required were twenty-four feet in length and sixteen feet in width. The cost of each courthouse was to be met by an annual poll tax which the precinct court could levy.<sup>3</sup>

An act of March, 1734/35, establishing Onslow and Bladen as precincts,<sup>4</sup> gave the justices of each the authority to erect a courthouse and a prison for their precinct. The justices of Onslow drew up the specifications for their buildings at the July term. They agreed to have Captain John Williams construct the buildings. When Williams declined their proposal, the court allowed Joseph and Stephen Howard to undertake the task under the terms offered to Williams:

to build the sd Court house Thirty foot long and Eighteen foot wide to be weather boarded with feather Edged Plank Covered with Shingles two foot long and laid on workmanlike & the house to be built workmanlike and a Prison Sixteen foot long & twelve foot wide the Sills of the Prison are to be ten by Eight the Sleepers are

<sup>2</sup> *North Carolina Historical and Genealogical Register*, II (1901), 100-101, 147, 314, 316; III (1903), 287; *C. R.*, II, 314, 357; *S. R.*, XXIII, 97; XXV, 162-172. An act of 1715 directed that a courthouse be built in the town of Bath for the "Precinct" of Beaufort and Hyde, but the date of its completion is not known (*S. R.*, XXIII, 74-75 [c. 52]). The Assembly thus showed its desire to have at least one courthouse in each of the counties of Albemarle and Bath to serve as the centers of government within the province.

<sup>3</sup> *S. R.*, XXIII, 100-102 (1722, c. 2).

<sup>4</sup> Gov. Burrington and his council established Onslow and Bladen as separate precincts in November, 1731, and October, 1732, respectively; however, the Assembly considered the action as an illegal assertion of authority and refused to seat their representatives. Edgewood was similarly established in May, 1732 (*C. R.*, III, 256, 417, 425, 562, 574-576). Acting as a court which enjoyed "such privileges as other precincts have," the justices of Onslow named two of their number, in April, 1732, to serve as commissioners to arrange for the erection of a courthouse, but nothing seems to have materialized (Onslow *C. M.*, April, 1732, Bath County Records, Southern Historical Collection, University of N. C.; *C. R.*, III, 256).



to be laid four Inches apart and the floor to be laid with white oak Plank two Inches thick the sides to be Studed with studs four Inches Square & placed four Inches apart with a Partition in the middle & weather borded with good Clapboards the Joice to be laid 4 inches apart laid all over head with Inch plank the house Covered with Shingles after the form of the Court house and to make a pair of Stocks & a whipping post all which sd work is to be finished workmanlike by the last day of Septembr next all on their own proper Cost and Charge the sd Jos Howard and Stephen Howard is to do the above sd work on any Place between Joseph Howards house and Russells line where they shall se[e] Convenient for the Conveniency of a good Spring facing the lower side of No: East branch of New River with full Previlidge of Cutting and making use of what timber they shall have Occasion of for accomplishing their work and previldeg of Cutting Cartways for hawling the timber, the Court house to be Cieled with Plank where the Justices Sitts with a Table and barrs after the form of Other Court houses with fashionable Stares to go up into the Court house Chamber and for their labour they are to be paid two hundred Pounds Currency at the raising of the sd house and two hundred Pounds Currency more at the finishing the Said Work and for the finishing the sd work by the time afore mentioned they oblige themselves to give Such bonds and Security as shall be Required when thereunto Required for the Performance of the sd work.<sup>5</sup>

At the end of twelve months the justices of Onslow examined the buildings. The men found the courthouse unfinished. To obtain a satisfactory adjustment with Joseph Howard, the court appointed four appraisers to evaluate the work and to return an award of arbitration to be binding on both the court and Howard.<sup>6</sup>

Since the act of 1722 granted the precinct courts the authority to levy taxes only for the construction of courthouses, many of the precincts were still lacking prisons in 1735. Governor Johnston appealed to the Assembly in September of that year to make some provision for obtaining "sufficient jayls."<sup>7</sup> Although the Assembly enacted no law empowering the courts to erect prisons,<sup>8</sup> the Car-

<sup>5</sup> Onslow C. M., Oct., 1735.

<sup>6</sup> Onslow C. M., Oct., 1736.

<sup>7</sup> C. R., IV, 227-228.

<sup>8</sup> The journal of the lower house of the Assembly for the year 1736 is apparently lost. There is a possibility that in it might be found resolutions relating to prisons which do not appear in the journal of the upper house. The justices of the Carteret Court may have considered their authority under the act of 1722 as broad enough to include the levying of taxes for a prison. An act of 1723 pertaining to Beaufort and Hyde intimates that the authority of these two precincts to build a courthouse under an act of 1715 carried with it the power to build a prison. (S. R., XXIII, 74-75 [1715, c. 52]; XXV, 192-193 [1723, c. 2]). Bertie had a jail as early as 1732 (Bertie C. M., Aug., 1732).

teret Court decided at its next term to have one built. The court minutes record that the action was prompted by "the Great Necessity and want of a Prison in Beaufort Town for the Good and Benefit of the Prect." The justices contracted with Daniel Rees for the construction of a prison of these specifications:

The Length to be Twenty Foot the Width Fifteen Foot The Walls of Sd Prison to be Saw'd Loggs not less than Foure Inches Thick and Duftailed at the Corners The Floors above and below to be lay'd with planck not less than foure Inches Thick also a partition to be in the Middle of Sd prison with Doors and lock to it Also one Strong Double Door on the out Side not less than three Inches thick with good Strong Iron Hinges and a Substantial Lock fitting for Such a Door Two Front Windows Two foot High and Eighteen Inches Wide with proper Iron Grates to the Same The Pitch or Distance betweene Floore and floore withinside to be not less than Seven Foot The Roof to be Covered with good pine Shingles well Nailed—The whole Worke to be don & performed Workman like for Such a Building & to be Compleaded in Foure Month time from this day.<sup>9</sup>

For erecting the prison and "a good Strong Substantial pair of Stocks" Rees was to receive £132. To see that Rees carried out the terms of the agreement, the court named three of its members as commissioners to supervise the construction.

The acts of March, 1738/39, which defined the courts' criminal jurisdiction and which established the office of county sheriff, focused the attention of several county courts upon the necessity of a prison. The justices of the Perquimans Court made plans for a jail at their April term in 1739,<sup>10</sup> and in August of the same year the Bertie Court ordered a tax for its prison.<sup>11</sup> But in 1741 some counties were still without a courthouse or a prison, and in several counties the buildings which did exist were dilapidated. To improve conditions throughout the province, the Assembly passed a law requiring the justices of each county to erect a courthouse, prison, and stocks, if such were lacking, and to maintain them in good repair thereafter.<sup>12</sup> Each court took the necessary action to comply with this law. The justices of Chowan ordered a pair of stocks;<sup>13</sup> the Bertie Court appointed commissioners to arrange for the erection of a jail and stocks;<sup>14</sup> the justices of Craven ordered

<sup>9</sup> Carteret C. M., Dec., 1736.

<sup>11</sup> Bertie C. M., Aug., 1739.

<sup>13</sup> Chowan C. M., July, 1741.

<sup>10</sup> Perquimans C. M., April, 1739.

<sup>12</sup> S. R., XXIII, 181 (1741, c. 18).

<sup>14</sup> Bertie C. M., May, 1741.

repairs for its courthouse and prison,<sup>15</sup> and the grand jury of New Hanover endeavored unsuccessfully to improve the conditions of its jail.<sup>16</sup>

Even after the Craven Court had the county prison repaired in 1741, the justices were not satisfied with the condition of the building. Therefore, in September, 1742, they ordered John Bryan, one of the most active justices of the county, to bring in an estimate of cost for a new jail thirty feet long, eighteen feet wide, and ten feet high. At the following term the court agreed with Bryan to build a jail of these dimensions for £1200. Bryan gave bond for twice that sum that he would complete the structure in twelve months. Despite the agreement and bond several years elapsed before the prison was completed. In December, 1743, Bryan asked for the first of several extensions of time. The court granted each of his requests without imposing a penalty. By March, 1744/45, however, the court was anxious to put the jail to use. As a preliminary step the court appointed four men "to receive the new goal."<sup>17</sup> At the same time the court ordered the old prison to be sold at vendue by any two of the four men named to receive the new building. These plans were premature for the new jail was not yet finished. Bryan had to obtain additional extensions of time. Finally, however, in June, 1747, Richard Lovett, an attorney, notified the court for Bryan that the jail was ready and asked the justices to inspect the work. After examining the building, the justices approved the construction and agreed that the work was done according to their specifications. As a part of their formal receipt of the building, they discharged Bryan from his bond.<sup>18</sup>

During the years which followed the passage of the act of 1741 the courts made repairs and improvements on the public buildings and the surrounding grounds. In 1743 Samuel Heighe made necessary repairs to the Pasquotank courthouse and built a wharf at the courthouse landing.<sup>19</sup> The Hyde Court, in March, 1746/47, directed Richard Leirmont, Esq., to "Agree with A proper person to Secure ye prison & mend ye Court house & Cleare ye Court house Yard fifteen yards Clear of Each Building Build a pare of Stocks and make a Box Sufficient to Keep ye Records of ye Court."<sup>20</sup> A

<sup>15</sup> Craven C. M., June, 1741.

<sup>16</sup> New Hanover C. M., June, Sept., 1741.

<sup>17</sup> "Goal" was a common misspelling for "gaol."

<sup>18</sup> Craven C. M., June, 1741—June, 1747.

<sup>19</sup> Pasquotank C. M., Oct., 1743.

<sup>20</sup> Hyde C. M., March, 1746/47.

year later the same court ordered a carpenter to make an office in the courthouse for the safekeeping of the county records.<sup>21</sup> John Bryan sought and obtained the appointment of the Craven Court to have the county's buildings refurnished and repaired. In June 1748, the court ordered him to supply the courthouse with benches branded with appropriate identification and to repair the windows and shutters. The following March he agreed to line the jail with timber and brick, to repair its windows, and to make a chimney and vent.<sup>22</sup>

Besides requiring the erection and maintenance of suitable public buildings, the act of 1741 authorized the county courts to mark out a space of not more than six acres adjoining the prison for the "Rules." Any prisoner, except those committed for treason or felony, were to be at liberty to walk in this area if they gave the sheriff good security to keep within the established bounds.<sup>23</sup> This measure was designed to preserve the health of prisoners. Unlike the other parts of the act, this provision was optional with the courts. Some courts waited years to have the rules surveyed. The justices of Craven County ordered such a survey in December, 1746.<sup>24</sup> The Chowan Court took similar action in April, 1747, after receiving a petition from Andre Richard who was in prison in default of a twenty-shilling fine.<sup>25</sup>

The division of Northampton County from Bertie County in 1741 produced several unusual problems for the Bertie Court. Heretofore, in the creation of a county or precinct the site of the existing public buildings had been satisfactory for the older unit. However, Timber Branch, the location of the Bertie courthouse, was no longer in the center of the county. A new site then was needed for Bertie as well as for Northampton. The situation was further complicated by the facts that Noah Pridham was in the midst of erecting a new courthouse at Timber Branch and that the justices had already levied a tax to pay for the construction of a jail there.

Two of the problems facing the Bertie Court were easily resolved. The Bertie Court accepted Pridham's proposal to settle the claim for his expenses in building the courthouse. The jus-

<sup>21</sup> Hyde C. M., March, 1747/48.

<sup>22</sup> Craven C. M., June, 1748; March, 1748/49.

<sup>23</sup> *S. R.*, XXIII, 181 (c. 18).

<sup>24</sup> Craven C. M., Dec., 1746.

<sup>25</sup> Chowan C. M., April, 1747; Chowan County Papers, IV, 78.



Justices granted Pridham a forty-one year lease on the building for an annual rent of one shilling.<sup>26</sup> The act creating Northampton specified the disposition of the returns from the tax for the prison. Under this law the tax money collected was to be appropriated toward the erection of the buildings in both counties on a basis of the number of the taxables in each.<sup>27</sup>

A more troublesome issue before the Bertie Court was the choice of a new location for the public buildings. Acting under the authority of the law dividing the county, the three justices present at the November term in 1741 chose for the new site the south side of Stony Creek at Joseph Barradial's plantation. The court appointed three justices as commissioners,<sup>28</sup> any two of whom were to arrange for the building of a courthouse thirty-two feet long and twenty-four feet wide, a "substantial" prison twenty-four feet long by twelve feet wide, and a "sufficient" pair of stocks.<sup>29</sup>

Six justices were present at the opening of the February term of the Bertie Court in 1741/42. After qualifying under a new commission, they took up the matter of the courthouse site. Thomas Barker and other inhabitants of the county petitioned for a reconsideration for a more convenient locality. Although William Cathcart and Peter West, two of the justices present in November, maintained that the court had no power to grant the petition, the majority ruled otherwise and decided in favor of a new location. The choice was a site near Red Bud Branch. Cathcart and West objected and had their dissent recorded. The court then revoked the November order and appointed new commissioners to oversee the erection of the buildings.

The question of locating the buildings was not yet settled. Thomas Jones, as the attorney for Cathcart and West and the original commissioners appointed in November, sought an appeal from the latest order of Bertie Court to the General Court. By a majority of four to two the Bertie court decided that "no such appeal could be granted because when the order of the November court was obtained Capt Bryant publicly declared that he never gave his Consent to erecting a Court house at Stony Creek, but

<sup>26</sup> Bertie C. M., May, 1742.

<sup>27</sup> S. R., XXIII, 206 (1741, c. 1).

<sup>28</sup> The commissioners were Col. Benjamin Hill, Thomas Hansford, and Peter West. West was the only one of these three who was present.

<sup>29</sup> Bertie C. M., Nov., 1741.



that his design in signing the dockets was that all other public affairs might not be left undone."<sup>30</sup>

The supporters of the Stony Creek site continued their fight by carrying the dispute directly to the General Court. They secured from that court a *certiorari* ordering the Bertie Court to deliver a record of its proceedings in the case so that the matter could be heard in the higher court. This effort proved to be futile when the General Court dismissed the action in October on the basis of the "return being insufficient."<sup>31</sup>

To end the wrangling among the justices and other inhabitants of Bertie, the Assembly passed a law in April, 1743, designating for the courthouse site any point between Cashie Bridge<sup>32</sup> and Will's Quarter Bridge upon which at least a majority of the justices of the county could agree. A majority vote by the justices was also necessary for the appointment of commissioners to supervise the construction.<sup>33</sup>

During the May term the Bertie Court decided upon the site and purchased an acre of land from James Castellaw, one of its members. The location was near Castellaw's mill and the county warehouse at Cashie Bridge. The court met in the warehouse until James Castellaw and James McDowall completed the new courthouse in time for the November, 1744, term. The following February the justices accepted the jail as being "completely built on the inside" and thereupon designated it "the publick Goal [sic] of this County."<sup>34</sup>

The act of 1743 for the settlement of the Bertie dispute provided a method for satisfying a claim which had arisen during the controversy. The three commissioners appointed in November, 1741, had agreed with John Wynns, the deputy clerk, for the erection of buildings at Stony Creek; and Wynns had begun the buildings before the February order changed the site. To satisfy all parties, the act called for an appraisal by two freeholders of the work Wynns had already done. In May, 1743, the court appointed John Harrell to agree with James Jones, Wynns's appointee, as to the

<sup>30</sup> Bertie C. M., Feb., 1741/42. A copy is in Chowan County Papers, III, 29, 30.

<sup>31</sup> General Court Dockets, Oct., 1742, Court of Assize, Edenton District; General Court Miscellaneous Material, 1741-1782, microfilm, NCDAH. The original of this docket is in Edenton, N. C.

<sup>32</sup> The spelling of this name in the act was "Cushy."

<sup>33</sup> S. R., XXIII, 215 (c. 7).

<sup>34</sup> Bertie C. M., May, 1743, NCDAH; Bertie C. M., Nov., 1744; Feb., 1744/45. *North Carolina Historical and Genealogical Register*, II (1901), 623-625.

value of materials collected and of construction completed at Stony Creek. The court ordered their appraisal of £250 to be paid Wynns.<sup>35</sup>

Occasionally the justices of a court co-operated with individuals to provide conveniences for the people attending court. William Daniel petitioned the Bertie Court in 1724 for a grant of land upon which he could erect a public house as there was "a great want of publick houses to Entertain the people that attend the sd Court and particularly a house for the Goal Keeper as is usual in other places." The justices granted Daniel a hundred-foot square on the southeast corner of the acre laid out for the courthouse. He was to have a ninety-nine year lease on the land provided he built a habitable house on the plot within a year.<sup>36</sup> The action of the Bertie Court twelve years later seems to indicate that Daniel had not qualified. In that year, 1736, the court ordered the laying out of a fifty-foot square on the east corner of the courthouse lot. The justices agreed to grant this plot to Thomas Hansford, one of their number, "to erect a house for accomodating the people coming to Court" upon condition that he build the house within twelve months' time. The land would then belong to Hansford, his heirs, and assigns as long as the house served the purpose for which it was intended.<sup>37</sup> The Perquimans Court made a similar grant to a resident of that county in October, 1739.<sup>38</sup>

The quitrent act of March, 1738/39, authorized another type of public building for the northern counties of the province in addition to the courthouses and prisons. The courts of Edgemombe<sup>39</sup> and the six counties bordering Albemarle Sound were to erect or hire warehouses at the locations named in the act.<sup>40</sup> These

<sup>35</sup> Bertie C. M., May., 1743-Feb., 1743/44.

<sup>36</sup> Bertie C. M., Nov., 1724.

<sup>37</sup> Bertie C. M., May, 1736.

<sup>38</sup> Perquimans C. M., Oct., 1739.

<sup>39</sup> Although the Assembly later decided to create Edgemombe County by legislation, this act indicates that the Assembly had previously recognized its establishment by the governor and council.

<sup>40</sup> The general locations authorized were: Edenton and Bennett's Creek Bridge or Chowan; the courthouse for Perquimans; William Relfe's landing for Pasquotank; the courthouse for Currituck; Joseph Spruill's landing for Tyrrell; Campbell's landing near the mouth of the Meherrin River, Whitmel's at Cashie Bridge, and Samuel Buxton's landing on the north side of the Roanoke or Bertie; and Samuel Hollingsworth's landing on the Roanoke for Edgemombe. When Scuppernongs River at the site for Tyrrell's warehouse was found to be unnavigable for craft carrying commodities, the Assembly passed a special act in 1740 changing the location to a point lower on the river (S. R., XXIII, 50-151 [1740, c. 10]). As the inhabitants of only the northern counties claimed

warehouses were to receive commodities offered by the inhabitants of these counties in the payment of quitrents. Although the court had a choice between building or hiring their warehouses, they favored building them. The Chowan Court made direct agreements with individuals for the construction of its warehouses, but the justices of Bertie and Perquimans appointed commissioners to make the arrangements for theirs.<sup>41</sup>

Before the Crown's disallowal of the quitrent act was known in North Carolina,<sup>42</sup> the Assembly extended the system of county warehouses throughout the entire colony. In 1740 each court of the southern counties was required to build or rent a warehouse "at the most convenient Landing, upon a Navigable River." These warehouses, together with those already authorized in northern counties, were for the receipt of commodities used in the payment of the county, parish, and provincial poll taxes.<sup>43</sup> The courts of Craven and Onslow rented suitable buildings, but the justices of Carteret and New Hanover decided to have theirs built.<sup>44</sup>

Because the warehouse was a building whose normal usefulness extended over only four or five months in the year, from late November to the first of April, the justices of Chowan ordered the sheriff and John Alston, Esq., to keep the keys to the warehouses at Edenton and at Bennett's Creek, respectively, and to rent the buildings to the best advantage when not in public service.<sup>45</sup> The justices of Onslow County economized in 1747/48 by using the county prison for the warehouse, since James Foyle, the inspector, had also become the sheriff.<sup>46</sup>

the right of paying quitrents with commodities from the early days of the Proprietors, the privilege was not extended at this time to the southern counties. Inhabitants of the latter paid their quitrents in specie or bills at the towns of Bath, Newbern, and Newton, the early name of Wilmington ("An Act for Providing his Majesty a Rent Roll for securing his Majesty's Quit Rents; for the Remission of Arrears of Quit Rents, and for Quieting the Inhabitants in their Possessions; and for the better settlement of His Majesty's Province of North Carolina," N. C. Acts, C. O. 5/333, P. R. O.). For discussions of the act, see *C. R.*, IV, 415-417, 425-432.

<sup>41</sup> Chowan County Papers, II, 100, 116, 121; Bertie C. M., Aug., 1739; Perquimans C. M., Oct., 1739.

<sup>42</sup> Although the disallowal occurred on July 31, 1740, knowledge of the action did not reach North Carolina until the next spring. Upon receiving the formal notice of the disallowal on May 21, 1741, the council ordered the issuance of a proclamation to that effect (*C. R.*, IV, 434-435, 595).

<sup>43</sup> *S. R.*, XXIII, 152 (1740, c. 13).

<sup>44</sup> Craven C. M., Sept., 1740; Onslow C. M., Oct., 1742; Carteret C. M., June, 1746; New Hanover C. M., Sept., 1740.

<sup>45</sup> Chowan C. M., July, 1744.

<sup>46</sup> Onslow C. M., Jan., 1747/48.

## C H A P T E R   V I I I

# Administrative Powers of the Court

## County Finance

The county court's authority to levy taxes was delegated by the Assembly expressly to enable the courts to bear the cost of local government. In the seventeenth century the cost was so small that the Assembly did not give the courts the power to tax. Local officials either contributed their services without remuneration or received their emolument from fees. However, when the Assembly directed the precinct courts to erect courthouses, it authorized the justices to levy taxes to pay for their construction. Having once granted the courts the power to tax, the Assembly eventually increased the number of purposes for which tax money could be used.

The earliest extant law in which the Assembly empowered a precinct court to levy a tax is an act of 1715. The Assembly authorized the justices of the precinct of Beaufort and Hyde to lay a tax on the owners of estates located in their precinct to pay for the cost of building a courthouse in Bath County. The act directed the court to set the rate of the tax so that the total return would not exceed one hundred pounds. The justices were to have the courthouse "built and finished with all convenient Speed and as soon as the circumstances of the Inhabitants will admit of raising the aforesaid sum."<sup>1</sup>

The Assembly made its first general delegation of taxing power to the precinct courts in 1722. A law authorized the justices of each precinct to raise the funds necessary for the purchase of land and for the erection of a courthouse by levying a poll tax at a rate of not more than five shillings per year. The action of a

<sup>1</sup> S. R., XXIII, 74-75 (c. 52).



majority of the justices of the precinct was required to lay the tax and to appoint someone to receive it.<sup>2</sup> The five-shilling maximum for this tax corresponded to the ceiling for the parish levy and equalled the amount of the current provincial poll tax.<sup>3</sup>

The act of 1722 was restricted to the nine precincts existing at the time, and these were named in the law.<sup>4</sup> Later acts creating new precincts and counties authorized their justices to levy taxes for the erection of their courthouses in the same manner as the act of 1722 prescribed. In 1734/35 the Assembly empowered the courts of Onslow and Bladen to use the revenue from their taxes to build a prison as well as a courthouse.<sup>5</sup>

When the governor and the Assembly reached an agreement in an act of March, 1738/39, as to a manner of collecting quitrents by which the northern counties could pay with commodities, the Assembly authorized a new county tax. The court of each of the seven northern counties was empowered to levy an annual poll tax not to exceed fifteen pence, proclamation money, to pay for the establishment and operation of warehouses and to pay the salary of the receiver-general's deputy for the county.<sup>6</sup> Although the quitrent law was disallowed, an act of 1740 retained the provisions for the warehouses and extended them to every county in the province. Each county court could levy an annual tax of as much as one shilling per poll to cover the costs of the warehouses and the salaries of the inspectors who examined the commodities received in payment of taxes.<sup>7</sup>

Before 1750 the Assembly enacted four more laws authorizing the county courts to impose new taxes. An act of 1741 empowered

<sup>2</sup> S. R., XXIII, 101 (c. 8).

<sup>3</sup> S. R., XXIII, 10 (1715, c. 8); XXV, 174 (1722, c. 2).

<sup>4</sup> These nine precincts were Currituck, Pasquotank, Perquimans, Chowan, Bertie, Carteret, Craven, Beaufort, and Hyde. The act refers to Beaufort and Hyde as "Precincts" in contrast with their designation in the singular as "Precinct" in 1715. Nevertheless, Beaufort and Hyde were to have a common courthouse at Bath (S. R., XXIII, 74 [1715, c. 52]; 102 [1722, c. 8]).

<sup>5</sup> S. R., XXIII, 119-120 (1734, c. 8); XXV, 212 (1729, c. 3), 213 (1729, c. 4). In 1735 the Onslow Court levied a poll tax of twenty-five shillings for their buildings instead of observing the annual maximum of five shillings specified in the 1722 law (Onslow C. M., July, Oct., 1735).

<sup>6</sup> "An Act for Providing his Majesty a Rent Roll for securing his Majesty's Quit Rents; for the Remission of Arrears of Quit Rents, and for Quietting the Inhabitants in their Possessions; and for the better settlement of His Majesty's Province of North Carolina," N. C. Acts, 1738, C. O. 5/333, P. R. O. For Governor Johnston's account of the passage of the act, see C. R., IV, 415-416.

<sup>7</sup> S. R., XXIII, 156 (c. 13).

each court to impose for two years "a sufficient Levy" not exceeding one shilling a poll for the erection of a courthouse, prison, and stocks, if such did not already exist in the county. Thereafter, when needed, the justices could levy a similar tax for the upkeep or replacement of these buildings.<sup>8</sup> The act of 1741 which transferred the supervision of weights and measures from the vestries to the county courts directed the justices of each county to levy "a sufficient tax" to provide for the necessary standards.<sup>9</sup> In 1743 the Assembly ordered the county courts to levy a tax of eight pence, proclamation money, for the purchase of ammunition and the hiring of suitable storehouses or magazines. This tax was only for one year, and its rate was the same throughout the province.<sup>10</sup> An act of 1748 directed the justices of each county to levy an annual poll tax large enough to discharge the cost of the per diem allowances of men serving as jurors at the higher courts.<sup>11</sup>

Occasionally the Assembly empowered the court of one or more counties to levy a tax for some special purpose. The most common cause was the running of a dividing line when a new county was created.<sup>12</sup> Another occasion arose when the Assembly made plans in 1741 for the laying out of the town of Johnston as the county seat of Onslow County. The Assembly directed the justices of that county to support the ferry serving the town with the returns of an annual tax.<sup>13</sup> In 1743 the justices of Chowan were empowered to levy a poll tax to pay for the damages assessed in laying out and making a new highway from Edenton towards the courthouse in Perquimans, for a gate at the town limit, and for such bridges as were necessary.<sup>14</sup>

The acts of 1738/39 and 1740, which established warehouses for commodities accepted in the payment of quitrents and taxes, introduced four important changes in county taxation. The revenue from county taxes was no longer assigned solely to public buildings, for the courts began using tax funds to pay the salary of a county official, first the receiver-general's deputy and later the

<sup>8</sup> S. R., XXIII, 181 (c. 18).

<sup>9</sup> S. R., XXIII, 178-180 (c. 17).

<sup>10</sup> S. R., XXV, 232-233 (c. 5).

<sup>11</sup> S. R., XXIII, 291 (c. 8). The higher courts were the General Court and the three circuit courts of "Assize, Oyer and Terminer, and General Gaol Delivery."

<sup>12</sup> S. R., XXIII, 168 (1741, c. 9), 248 (1746, c. 2), 249-250 (1746, c. 3), 342 (1749, c. 1).

<sup>13</sup> S. R., XXIII, 171 (c. 12).

<sup>14</sup> S. R., XXIII, 214 (c. 6).

inspector at each warehouse. The two acts also marked the introduction of an annual tax levy by the county courts throughout the province.<sup>15</sup> At the same time these laws established the season from August to November as the time for levying the annual tax assessment.<sup>16</sup> Finally, with the act of 1740 the Assembly began to eliminate the requirement that the action of a majority of the justices in a county was necessary to levy a tax. Later acts contained this restriction only if the location of a courthouse was involved.<sup>17</sup>

After the removal of the requirement that the vote of a majority of the justices was necessary to levy a tax, taxation became a routine court duty. Any three or more of the justices could impose a tax in the same manner as they could transact any other business of the court. The justices' attendance at court was no greater when a tax was to be levied than at any other term.

Although a county court was required to levy only the warehouse and inspection tax at its term which came during the season from August to November, the court usually levied its other taxes at the same time. This procedure permitted the inhabitants of the county to know what taxes they would owe before the warehouses

<sup>15</sup> The action of the Craven Court in September, 1744, emphasizes this point. The court ordered its clerk "to make out a minute of all the taxes laid by the court Since they have had that power and produce them to the next court" (Craven C. M., Sept., 1744). The first record of an authorization for an annual precinct tax was an act of 1723 empowering the court of Beaufort and Hyde to levy two annual poll taxes. One was for the maintenance of its courthouse, the other for the repair of the Bath County prison. Neither tax was to exceed two shillings. The tithables of Beaufort and Hyde were to pay the first tax, and all of the tithables of Bath County the second (*S. R.*, XXV, 192-193 [c. 2]). No court minutes have been preserved which would indicate to what extent this law was observed.

<sup>16</sup> The quitrent act required the northern counties to impose the annual tax it authorized during the court term which followed the first of August. The 1740 act empowered the justices of each county to levy the tax "at the court next after the Ratification of this Act, and so yearly" (*S. R.*, XXIII, 156 [1740, c. 13]). The ratification took place on August 22, 1740 (*C. R.*, IV, 550).

<sup>17</sup> Not every subsequent act pertaining to the location of a courthouse contained this requirement. No mention of it occurs in three acts relating to Edgecombe, Bertie, and Anson (*S. R.*, XXIII, 164-165 [1741, c. 7], 205-206 [1741, c. 1], 344 [1749, c. 2]). However, the decision of a majority is mentioned in four acts pertaining to Bertie, Johnston, Granville, and Duplin (*S. R.*, XXIII, 215 [1743, c. 7], 248 [1746, c. 2], 249-250 [1746, c. 3], 342 [1749, c. 1]). The influence of the dispute in Bertie may have been responsible for the resumption of this restriction in 1743. For details of this dispute, see *supra*, p. 104.

opened in late November. Furthermore, since by late summer the sheriff had had an opportunity to report on his collections and disbursements during the year, the court could then adjudge the tax rate that would be necessary to provide a return sufficient to satisfy the arrears and to meet the anticipated needs.<sup>18</sup>

In levying a tax the county court usually specified the purpose for which the revenue was to be used. The Chowan Court's order in 1741 was "that a Tax be laid for paying the Inspectors & other County charges & Purchasing Weights & Measures &c at the rate of Six pence Proct money per Tythable."<sup>19</sup> Occasionally a court imposed several taxes, each of which was for a specific purpose. In November, 1742, the Bertie Court levied one tax of four pence, proclamation money, to pay for the inspection charges in arrears, another to cover the cost of inspection for the ensuing year, and a third to recompense Thomas Hansford, the sheriff, for his "Extraordinary services" during the previous two years. In addition to these taxes the court imposed a tax of one shilling, current money, to defray the charges in running the county line between Bertie and Northampton.<sup>20</sup> However, instead of giving in detail the purposes of a tax, the Hyde Court specified that the tax of eight pence, proclamation money, which it imposed in 1745 was for "ye contingent Charge of ye County for ye year Ensuing."<sup>21</sup>

Once the county courts began to impose annual taxes, the most common amount was a levy of six or eight pence, proclamation money.<sup>22</sup> While the return from such a tax was usually sufficient to cover the costs of inspection and building maintenance, more funds were needed when the court made arrangements for the construction of, or extensive repairs to, its public buildings. Either of these undertakings often required the tax to be increased to two shillings or two shillings six pence. Beginning in 1748, the cost of the jurors' per diem while attending the superior courts added almost two shillings to the other county charges. During the "North-South" dispute over representation in the Assembly the

<sup>18</sup> Chowan C. M., Oct. 1745; Chowan County Papers, IV, 12.

<sup>19</sup> Chowan C. M., Oct., 1741.

<sup>20</sup> Bertie C. M., Nov., 1742. For another tax breakdown, see Craven C. M., Sept., 1742.

<sup>21</sup> Hyde C. M., Sept., 1745.

<sup>22</sup> The latter amount was the equivalent of five shillings in current money.



counties in the northern section of the province avoided this last expense by refusing to send jurors to the assize courts.

Until 1739 a precinct court could appoint whom it pleased as the collector of its tax for the courthouse and other public buildings.<sup>23</sup> When the Assembly created the office of county sheriff in March, 1738/39, it gave him the task of collecting both county and provincial taxes.<sup>24</sup> With regard to the county taxes, the sheriff's duties were to collect and distrain, if necessary, the taxes, to hold the money realized subject to the court's disposition, to make the disbursements ordered, to render an account of his transactions, and to deliver any surplus into the hands of the court. The sheriff's bond of five hundred pounds, sterling, was his security for the funds he handled.

Since poll taxes were levied on the basis of the number of "tithables" or "taxables,"<sup>25</sup> each court endeavored to see that a complete list of the tithables in their county was compiled. An act of 1715 considered as tithables all free men of the age of sixteen or over and all slaves, male and female, twelve years of age or older. In 1723 the Assembly included as tithables all Negroes, mulattoes, mustees, or other persons of mixed blood who were at least twelve years old and any white person married to someone of color.<sup>26</sup> An act of 1722 required the constables to go annually from house to house within their districts to list the names of the tithables and to deliver the list to the marshal or the deputy.<sup>27</sup> An act of 1738/

<sup>23</sup> The courthouse act of 1722 specified that the inhabitants of each precinct were to pay the tax which the act authorized to the justices of the court or to the person or persons whom they appointed to collect the levy (*S. R.*, XXIII, 101 [c. 8]). The Onslow Court appointed five different people at separate times to collect the tax of twenty-five shillings it imposed in 1735 (*Onslow C. M.*, July, 1735-Jan., 1736/37).

<sup>24</sup> For the act creating the office of sheriff, see *S. R.*, XXIII, 122-127 (c. 3). For the act appointing the sheriff the collector of all taxes, see "An Act to prevent the concealment of Tithables in the Several Countys within this Province, for Declaring what Persons shall be Deem'd Tithables; and for Defraying the Standing and Contingent Charges of the Government; and appointing Publick Treasurers for this Province; and for Granting to his Majesty a Poll Tax of five Shillings  $\text{p}$  head Current Money to be levy'd on the Tithable Inhabitants of this Province," *N. C. Acts*, 1738, C. O. 5/333, P. R. O.


<sup>25</sup> The term "taxable" first appeared in North Carolina legislation in an act of 1743 (*S. R.*, XXIII, 210 [c. 2]).

<sup>26</sup> *S. R.*, XXIII, 72 (1715, c. 51), 106 (1723, c. 5).

<sup>27</sup> *S. R.*, XXV, 174-175 (c. 2). In 1735 the Onslow Court ordered the constables to return their lists of tithables to the nearest justices (*Onslow C. M.*, July, Oct., 1735). Also see *Craven C. M.*, March, 1737/38.

39 required each master and mistress to appear before the nearest justice of the peace by the first of June of each year and give under oath an exact list of their tithables. The justices were to transmit the names to the next court so that the clerk could prepare three copies of the compiled lists, one each for the provincial treasurer of the district, the sheriff, and the church wardens.<sup>28</sup> Because a complete list of tithables was not being obtained by the method established in 1739,<sup>29</sup> the Assembly introduced some changes in the method of listing tithables in 1743. At its term during the quarter beginning with May, each court was to issue "warrants" to the constables ordering them to go from house to house within their districts to summon the head of every family to appear before the next county court, or before some justice prior to the date of the next court, to give a list of the taxables in his family or under his care. The constables were required to give the court a list of the people whom they had notified, and the justices had to bring or send to court the lists they received.<sup>30</sup>

By custom, infirm paupers could obtain exemption from their taxes. At the September term of the Hyde Court in 1747 Samuel Sinclear, a justice, entered a petition to have Thomas Harvey exempted from his taxes and public duties. After examining Harvey and determining that he was "incapable of getting his Living," the court granted his petition and ordered the clerk to certify the court's approval to the Assembly so that Harvey could be exempted therefrom.<sup>31</sup> The Assembly granted petitions approved in this

<sup>28</sup> "An Act to prevent the concealment of Tithables in the Several Countys within this Province, for Declaring what Persons shall be Deem'd Tithables; and for Defraying the Standing and Contingent Charges of the Government; and appointing Publick Treasurers for this Province; and for Granting to his Majesty a Poll Tax of five Shillings  head Current Money to be levy'd on the Tithable Inhabitants of this Province," N. C. Acts, 1738, C. O. 5/333, P. R. O. This act established two districts for the collection of the provincial poll tax. William Downing was the treasurer of the nine northern counties, and Edward Moseley for the five southernmost counties. A list of the tithables of Perquimans County appear in the minutes of its court for July, 1740.

<sup>29</sup> For examples of persons neglecting to list their tithables, see Craven C. M., March, 1741/42; Onslow C. M., Jan., 1742/43.

<sup>30</sup> S. R., XXIII, 210 (c. 2). An act of 1749 added some minor details to this procedure (S. R., XXIII, 345-346 [c. 3]). The courts still had trouble obtaining a list of the tithables. For examples, see Craven C. M., Sept., 1747; Chowan C. M., Jan., 1747/48—Jan., 1748/49.

<sup>31</sup> Hyde C. M., Sept., 1747. See also Hyde C. M., Dec., 1746; Carteret C. M., March, 1741/42; Sept., 1748; Craven C. M., Sept., 1743.

manner as a matter of course.<sup>32</sup> This procedure of obtaining a release from taxes was also used by masters whose slaves had become infirm. Thomas Henny petitioned the Craven Court in 1747 "that he had a negro woman called Dina, a cripple & unable to work, & prays that the same may be represented to the General Assembly." As usual, the court approved the request.<sup>33</sup>

Since Negroes were considered as tithables as soon as they reached the age of twelve, owners or masters sometimes asked the county courts to adjudge the ages of young Negroes for tax purposes. In 1747 the Craven Court fixed the ages of three Negro boys that Elias Lagardee brought before it as twelve, ten, and eight.<sup>34</sup> The next year the Hyde Court estimated the ages of three Negroes belonging to Richard Leirmont, a justice, as eleven for the boy and ten for each of the girls.<sup>35</sup>

- Because of a shortage of gold and silver specie in the colony the inhabitants could pay their taxes with paper money or with rated commodities. Inasmuch as several of the acceptable commodities were perishable, the Assembly established the period for tax collection during the winter. The tax act of 1722 required the marshal or his deputy to receive the commodities from the first of January to the last day of April at the landings where payments of public taxes customarily had been made. There were to be not more than three landings per precinct.<sup>36</sup>

An act of 1740 established a more elaborate system for the use of commodities in the payment of taxes. Warehouses were to be open for the receipt of commodities during the last ten days in November and January. When a person brought any of the rated goods to a warehouse, the inspector's first duty was to examine and weigh the products. If the commodities were merchantable,<sup>37</sup> he gave the taxpayer a receipt in the form of a promissory note or notes for the particular goods received. The commodities remained in the warehouse subject to delivery on demand to any person presenting the promissory notes. The value of each note was

<sup>32</sup> C. R., IV, 391, 559, 864.

<sup>33</sup> Craven C. M., June, 1747.

<sup>34</sup> Craven C. M., Sept., 1747.

<sup>35</sup> Hyde C. M., Sept., 1748.

<sup>36</sup> S. R., XXV, 175 (c. 2). For the rates of the commodities until 1729, see S. R., XXIII, 54-55 (1715, c. 40); XXV, 206 (1723, c. 14). The currency act of 1729 set up new rates ("An Act for the Making and Emitting the Sum of Forty Thousand Pounds, Public Bills of Credit of North Carolina," Legislative Papers, 1689-1759, NCDAH).

<sup>37</sup> For the procedure which ensued if the inspector considered the goods to be unmerchantable, see S. R., XXIII, 54-55 (1715, c. 40).

based upon the value of the commodities it represented according to the rates prescribed in the act. The notes, commonly referred to as "inspector's notes," became legal tender for the payment of all taxes, fines, and judgments. Since the sheriff or his deputy was required to attend the warehouse on the dates the commodities were to be received, a person could discharge his taxes by giving to the sheriff enough notes to satisfy his liability. After deducting a commission of 3 per cent, the sheriff delivered the notes paid in for county and parish taxes to the persons appointed to receive them. He likewise turned over the notes for provincial taxes to the treasurer of the district.<sup>38</sup> The officials who received the notes from the sheriff transferred the notes to the persons who had claims against the county, parish, or province.<sup>39</sup>

If a person failed or refused to pay his taxes by the last day of January, the sheriff could distrain his goods and chattels and sell them at public vendue after the tenth of February. When the proceeds from such a sale exceeded the tax and charges, the sheriff returned the surplus to the taxpayer.<sup>40</sup>

Each county court was free to adopt its own method of disbursing the county's tax receipts. A court sometimes appointed one of its members as a "treasurer" to receive the money from the sheriff and disburse it according to the court's orders.<sup>41</sup> In

<sup>38</sup> In 1748 the northern district included the counties of Currituck, Pasquotank, Perquimans, Chowan, Tyrrell, Bertie, Edgecombe, Northampton, and Granville; and the southern district consisted of Craven, Carteret, Onslow, New Hanover, Bladen, Johnston, Beaufort, and Hyde (*S. R.*, XXIII, 273 [1748, c. 1]). Prior to that date Beaufort and Hyde were in the northern district.

<sup>39</sup> *S. R.*, XXIII, 152-157 (1740, c. 13). Anyone who received notes in payment of his claims or debts was expected to call for the commodities at the warehouse by the first of April or else have the goods remain in the warehouse at his own risk. If a warehouse accidentally burned down, the Assembly made good the loss sustained.

<sup>40</sup> *S. R.*, XXIII, 154 (1740, c. 13).

<sup>41</sup> This county "treasurer" is not to be confused with the precinct "treasurer" the Assembly appointed. The latter was an official directly responsible to the Assembly for the collection of provincial taxes during the years from 1715 to 1722 and from 1729 to 1739 (*S. R.*, XXIII, 91 [1715, c. 43]; XXV, 174-175 [1722, c. 2]; "An Act for the Making and Emitting the Sum of Forty Thousand Pounds, Public Bills of Credit of North Carolina," Legislative Papers, 1689-1759, NCDAH; "An Act for granting to his Majesty the Sum of Fourteen Thousand One hundred and fifty pounds three Shillings and two pence, for the Service of the public of this Province; and for laying a Tax on the Inhabitants of the same for the payment thereof; and for Stamping the sum of Ten Thousand Pounds, Bills of Credit for the more immediate discharge of part thereof," *N. C. Acts*, 1734, C. O. 5/333, P. R. O.).



June, 1741, the Craven Court appointed John Fonvielle, the county inspector, as its treasurer to "account with the Sheriff or any other person & receive all such money as has been or shall be levied by this Court for use of the County."<sup>42</sup> Occasionally the sheriff himself was referred to as the "treasurer."<sup>43</sup> In several counties the chairman of the court received the money from the sheriffs and made disbursements to the persons who had lawful claims against the county.<sup>44</sup> However, the most common practice was for the court to allow the sheriff to retain the funds which he collected and hold them subject to the court's disposition. The Craven Court changed to this method after two years' experience with a treasurer.<sup>45</sup> Even though the Hyde Court had a treasurer, it sometimes ordered its sheriff to make disbursements.<sup>46</sup>

John Dudley's experiences in Onslow County are typical of those of a sheriff who made the disbursements for a county. Dudley became sheriff in July, 1743, and continued in office for four years. During this period the Onslow Court levied four annual taxes of five shillings, current money. Dudley rendered an account of his first year's collections to the Onslow Court in July, 1744. From 545 taxables, 20 others being insolvent, he had £70 to pay to the court, and he requested the court's indulgence until the next term for the remainder. The justices granted his request and ordered him to account for any money he might receive from the 20 persons he had returned as insolvent. The court used the money he paid in to settle the county's obligations for its ammunition. Thereafter the justices permitted Dudley to retain the funds he collected until they gave him orders for disbursements. The payments they ordered during Dudley's terms were for the salary of the inspector and the expenses of operating the warehouse, the operation of the ferry over New River at Johnston during the time of court and elections, the cost of erecting a prison, the salary of the magazine keeper, and the rent of a house in Johnston as the site for the court. At the conclusion of his two terms as sheriff Dudley reported having in his hands £91 13s. of the county tax funds. After deducting

<sup>42</sup> Craven C. M., June, 1741.

<sup>43</sup> New Hanover C. M., June, Dec., 1741; Pasquotank C. M., April, 1743.

<sup>44</sup> Pasquotank C. M., July, 1740; April, 1743; July, 1744; Carteret C. M., June, 1747-Dec., 1748; Bertie C. M., Nov., 1742; Chowan County Papers, II, 116.

<sup>45</sup> Craven C. M., March, 1742/43.

<sup>46</sup> Hyde C. M., Dec., 1744-Dec., 1749.

£5 for his salary as inspector, he was prepared to make his final settlement. When he did this in April, 1749, he was clear of all responsibility for his collection of taxes.<sup>47</sup>

Although the sheriffs of Craven County made the disbursements which the court ordered and rendered accounts of their collections, the justices experienced great difficulty in obtaining final settlements with them. To assist in remedying this situation in 1744 the court had its clerk prepare a list of every tax it had levied since it had the power to tax. With this list the court endeavored to collect the balance due from each sheriff. The matter dragged on for three years. By this time the first three sheriffs had died, and the court had to obtain the money from their executors.<sup>48</sup>

In addition to the revenue from taxes the county courts had as funds for their disposal a part of the fines and amercements they levied. By law, the fines were assigned to either the Crown, the county, or the parish, depending upon the nature of the offense, and for many of the fines the informer was entitled to receive half of the amount for bringing the offense to the attention of the court.<sup>49</sup> Before the courts were empowered to levy taxes, the funds from fines were their only source of income.

<sup>47</sup> Onslow C. M., July, 1743–April, 1749. An act of 1743 freed the sheriff from having to render an account of his collections before June of each year. The act also granted the sheriff the power to make distress for unpaid taxes during the two years which followed his attendance of the warehouses. The expiration of his term of office did not affect this right (*S. R.*, XXIII, 212 [c. 2]). For the orders of a court and the records of a sheriff's disbursements, see *Chowan County Papers*, II, 96, 100, 103, 116, 117, 121; *Chowan C. M.*, Oct., 1743. These records pertain to Thomas Luten's term of office (1739-1741) as the first sheriff of Chowan County.

<sup>48</sup> *Craven C. M.*, Sept., 1744–Sept., 1747. William Wilson, George Roberts, and Joseph Hannis were the first three sheriffs. James Mackilwean succeeded Hannis.

<sup>49</sup> Abraham Mitchell's account of the funds he had in his hands in 1743 illustrates the assignment of the fines. Upon completing his term as sheriff Mitchell had £8 3s. 9d. due the Crown from fines, £6 19s. due the parish, and £38 from amercements due the Onslow Court (*Onslow C. M.*, July, 1743). The laws of 1715 provided for a varied disposition of fines. A justice convicting persons for a nonobservance of Sunday was to pay their fines to the church wardens for "the Use of the poor." The fines church wardens received from cases of adultery or fornication were for "the use of that Parish or precinct" (*S. R.*, XXIII, 5 [c. 7]). Fines arising from the concealment of tithables were to go to the vestry "for the use of the parish," while those from officers for taking excessive fees went to the vestry for "the use of the Precinct" (*S. R.*, XXIII, 72 [c. 51], 87 [c. 58]). If officers of the court were convicted of pleading as lawyers, their fines were to be applied for "the use of the Publick" (*S. R.*, XXIII, 16-17 [c. 14]). The Proprietors were to receive the fines of justices

The courts used their share of the money from fines for a variety of purposes. In 1725 the Carteret Court used its amercements for the six preceding months to pay rent for the house in which it met.<sup>50</sup> Many courts drew upon their fines to pay for the repair of their courthouses and jails.<sup>51</sup> The courts of Carteret and Onslow occasionally allotted their amercements to people who agreed to furnish the justices with meals during the court term.<sup>52</sup> The division of the amercements by the Onslow Court in January, 1744/45, "among ye Members that Attend Court according to the time of each attendance," was probably to reimburse the justices for the expense of their meals.<sup>53</sup> In 1736 the justices of Perquimans reserved a twenty-five pound fine that had been levied for contempt to buy record books for the clerk's and register's offices.<sup>54</sup> The Bertie Court assigned its amercements to the court crier in 1734 for his wages, and the Craven Court occasionally paid its drummer from its amercements.<sup>55</sup>

The county courts required the persons who handled money from fines to account for the funds. Since the clerk of Craven County was responsible for receiving the amercements of its court, the justices required him to settle his accounts frequently with one

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who failed to send promptly to the courts the reports of their examinations of suspected criminals together with the recognizances they took (*S. R.*, XXIII, 19 [c. 16]). Some of the penalties under the servant and slave act were to go "towards defraying the Contingent charges of the Government" (*S. R.*, XXIII, 66 [c. 46]). When the acts of 1715 were revised, some of the fines were reassigned. Fines for violations of the acts pertaining to weights and measures and the listing of tithables were for the use of the county instead of the parish; and those for offenses set forth in the acts relating to ordinaries and servants and slaves were for the use of the parish (*S. R.*, XXIII, 178-180 [1741, c. 17], 184-185 [1741, c. 20], 191-204 [1741, c. 24], 210-211 [1743, c. 2]).

<sup>50</sup> Carteret C. M., Sept., 1725.

<sup>51</sup> Bertie C. M., Aug., 1732; Pasquotank C. M., Jan., 1739/40; April, 1740; Perquimans C. M., Jan., 1739/40; Onslow C. M., July, 1747; Chowan C. M., April, 1748. The vestry of St. John's Parish in Carteret used some of its funds to maintain the local public buildings. In 1729 the vestry allotted money to defray the cost of repairs to the courthouse for which the justices had contracted (Carteret C. M., June, 1729). Later in 1742 and 1743 the vestry gave orders to their church wardens to employ people to keep the courthouse and prison in repair (Vestry Minutes, May, 1742; April, 1743; Carteret County Records, Vestry Book, St. John's Parish, Beaufort, I, fols., 1, 3).

<sup>52</sup> Carteret C. M., June, 1729; March, 1732/33; Onslow C. M., Oct., 1736; April, 1737.

<sup>53</sup> Onslow C. M., Jan., 1744/45.

<sup>54</sup> Perquimans C. M., April, 1736.

<sup>55</sup> Bertie C. M., May, 1734; Craven C. M., June, 1744; June, 1747.

or more of their number.<sup>56</sup> From time to time the Onslow Court called upon its clerk to prepare a list of recent amercements and then ordered the sheriff to account for them.<sup>57</sup> When necessary, a court proceeded to have an action instituted against a sheriff who refused to pay into court the amercements which he had received.<sup>58</sup>

The difficulty a court experienced in obtaining from the sheriff the payment of all county funds in his hands occurred more frequently in some counties than in others. This fault was not as serious as it might appear to be. The sheriff disbursed and accounted for the major portion of the county tax funds according to the court's orders. The amount withheld, if any, was usually a small fraction of the money for which he was responsible, and the court had a remedy for this problem in that it could institute proceedings against the sheriff or his securities. Doubtless the reason that a court was often reluctant to press the matter to the full extent of the law was that some of the members of the court were delinquent ex-sheriffs or their securities.<sup>59</sup>

<sup>56</sup> Craven C. M., June, 1743; Dec., 1744; March, 1744/45; Sept., 1745; Sept., 1746; March, 1746/47.

<sup>57</sup> Onslow C. M., July, 1741; Oct., 1742; Jan., 1742/43; Jan., 1745/46. See also Hyde C. M., Dec., 1750.

<sup>58</sup> Onslow C. M., Jan., 1743/44; Carteret C. M., March, 1747/48.

<sup>59</sup> This generalization applies to the sheriff's handling of county, not provincial, taxes and fines. The lack of records pertaining to the collection of provincial taxes for the period before 1750 prevents any comparable statement on his handling of provincial funds.



# Administrative

## Powers of the Court

### Supervision of Roads

As the population of North Carolina increased during the early decades of its colonization, the settlers found that there was not sufficient land for everyone to live adjacent to navigable creeks and rivers. Latecomers who had to settle inland needed roads for their travel to and from public meetings and the principal landings. In the early days the Assembly authorized the laying out of specific roads, one of which was the road for the inhabitants "on the back of Winleys plantaçon." The road was to be laid out "as conveniently as may be for the sd inhabitants without going through the cleared ground of the sd plantaçon." When no progress toward preparing the road had been made by September, 1694, William Gascoigne appeared before the General Court and asked for action. Orders were issued to the Chowan Precinct Court to "cause a road to be laid out according to the sd act."<sup>1</sup>

Before the end of the seventeenth century the precinct courts became responsible for the repair of roads within the bounds of their jurisdiction and had authority to lay out new roads. A court organized the male inhabitants of the precinct into road companies and assigned each company a section of the highways nearest the men's homes to maintain. To supervise the work of the road companies the court appointed overseers, or surveyors as they were sometimes called.<sup>2</sup> In April, 1700, the justices of Perquimans

<sup>1</sup> General Court Minutes, Sept., 1694; *C. R.*, I, 413.

<sup>2</sup> Perquimans C. M., April, 1697–Oct., 1706; *C. R.*, I, 486-656, *passim*. As the Perquimans Court was not appointing overseers prior to 1694, the loss of its court minutes for almost three years, from 1694 to 1697, makes it impossible to determine exactly when the precinct court gained this power.

Precinct granted John Hopkins his petition to "have a Roade for His Cart between His Plantations," provided the route selected injured none of his neighbors' plantations.<sup>3</sup>

After the precinct courts became responsible for the maintenance of roads, they did not always keep them in good repair. The accounts of Anglican ministers paint a dismal picture of overland travel during the first decade of the eighteenth century. In 1704 John Blair reported his experiences in North Carolina to the Society for the Propagation of the Gospel in Foreign Parts:

I arrived amongst the inhabitants, after a tedious and troublesome journey, 24th ditto [1704]. I was then obliged to buy a couple of horses, which cost me fourteen pounds,—one of which was for a guide, because there is no possibility for a stranger to find his road in that country, for if he once goes astray (it being such a desert country) it is a great hazard if he ever finds his road again. Beside, there are mighty inconveniences in travelling there, for the roads are not only deep and difficult to be found, but there are likewise seven great rivers in the country, over which there is no passing with horses, except two of them, one of which the Quakers have settled a ferry over for their own conveniency, and nobody but themselves have the privilege of it; so that at the passing over the rivers, I was obliged either to borrow or hire horses which was both troublesome and chargeable, insomuch that in little more than two months I was obliged to dispose of the necessaries I carried over for my own use, to satisfy my creditors.<sup>4</sup>

Five years later William Gordon expressed a similar opinion, "The roads are generally very bad, especially in Perquimans and Pasquotank, which makes it very troublesome work for one minister to attend two precincts."<sup>5</sup>

During the next two decades the condition of the roads improved. John Brickell, writing of his travels in North Carolina during 1730, presents a more favorable account of the roads and travel:

The Roads are as good as in most parts of the World, and the travelling as pleasant, especially the Road from *Edentown* to *Virginia*, being made broad and convenient, for all sorts of Carriages,

<sup>3</sup> Perquimans C. M., April, 1700; *C. R.*, I, 533.

<sup>4</sup> *C. R.*, I, 600.

<sup>5</sup> *C. R.*, I, 711. Gordon traveled only in the precincts of Chowan, Perquimans, and Pasquotank. For a discussion of travel during the Proprietary period, see Clonts, "Travel and Transportation in Colonial North Carolina," *North Carolina Historical Review*, III (1926), 16-35.

such as Coaches, Chaises, Waggons and Carts, and especially for Horsemen . . . .

In other parts the Roads are more like Paths than any publick Road, only that they are made broad enough for Coach, Chaises, and all manner of Carriages. But this is a general Rule to be observed throughout all *America*, that wherever you meet any of those Paths like Roads, with the Trees marked or notched on each side, it is a sure sign that it is a publick Road from one *Christian* Town to another. Notwithstanding there are several Paths of Horses, Cows, and other Beasts in the Woods, as large as the former, which are to be avoided, by reason that the Trees are not marked as above.<sup>6</sup>

The earliest extant law pertaining to roads and ferries is an act of 1715. Declaring that all roads and ferries already laid out or appointed by any act of Assembly or court order were to be "Publick Roads & Ferries," the act empowered the precinct courts to lay out new roads or to alter existing ones, to appoint locations for bridges, and to settle ferries. Jointly or severally, the justices were to see that these essential parts of the province's transportation network were maintained.<sup>7</sup>

Two laws of 1734 modified the system of road maintenance set up by the act of 1715. One act gave the surveyors, or overseers, in Albemarle County the additional responsibility of clearing the navigable streams and increased the penalties imposed upon the inhabitants for neglecting or refusing to fulfil their obligations.<sup>8</sup> The other act inaugurated a new system of road supervision in Bath County. Each precinct court was ordered to appoint road commissioners who were to assume full responsibility for "laying out directing and managing the Several Roads Highways and Bridges" and clearing the navigable rivers and creek in the precinct.<sup>9</sup> These two systems of road supervision continued virtually unchanged throughout the remainder of the first half of the eighteenth century.<sup>10</sup>

<sup>6</sup> *The Natural History of North Carolina*, p. 262.

<sup>7</sup> S. R., XXIII, 46-48 (c. 36).

<sup>8</sup> S. R., XXIII, 118-119 (c. 6).

<sup>9</sup> "An Act for laying out making altering and keeping in repair the several Roads and highways within the several Precincts of the County of Bath, and for building Bridges, and cleansing and keeping clean the several Rivers and Creeks within the same," N. C. Acts, 1734, C. O. 5/333, P. R. O.

<sup>10</sup> An act of 1745 pertaining to the southern counties retained the commissioner system. A uniform system of road supervision was re-established throughout the province in 1764 (S. R., XXIII, 220-229 [1745, c. 5], 607-611 [1764, c. 3]).

Although after 1734 road commissioners replaced the precinct courts in supervising the roads in the southern part of the province, the commissioners apparently continued the general practices previously followed by the courts throughout the entire province and continued by the courts in the northern section.<sup>11</sup> When the inhabitants of a particular area desired a road to link their property with the rest of the province, their first step was to present a petition to the county court or road commissioners. Sixteen inhabitants above Little River Bridge submitted the following petition for a road to the Perquimans Court in April, 1739:

Forasmuch as we the Inhabitants on the head of Little River (that is on this side of the River) Liveing far distant from the public Road and the way very bad & the River not being navigable for several miles below us, & no road to pass & repass with Carts, that we the said inhabitants have no convaniant [*sic*] to transport the produce of our Lands, & Increase of our Stock to Market or Landings without much Trouble and Inconveniency the way being very dirty & miry & Several bad branches to cross so we the petitioners humbly Crave the Leave of this Court to grant us the petitioners, an order for a Road from the heighest Inhabitants down to the Publick Road to be maintained & kept in order by us the inhabitants on the upper side of the fork Swamp.<sup>12</sup>

If the petition for a road was granted, the court then appointed a jury of at least twelve men to lay out the route. Upon granting Simon Jeffries' request for a road from Bridges Creek to meet the road that had been ordered from Henry Wheeler's mill to Brady's landing on the Meherrin River, the Bertie Court named fifteen men as a jury to lay out the road. At least twelve of them had to agree to the findings. The jurors were first to appear before a justice of peace and take an oath "to lay out the said Road to the greatest ease and Conveniency of the Inhabitants and as little as may be to the prejudices of any private person." Should the route selected injure someone's property, the jury was to determine the extent of damage so that the overseer of the road could levy and collect a proportionate amount from each tithable due to work on the roads and pay the injured party. The Bertie Court appointed William Bennett as overseer of this road and directed him to have

<sup>11</sup> Inasmuch as the road commissioners acted independently of the southern courts for the most part, the court minutes contain little reference to them. The following discussion is therefore based almost entirely on the records of the northern courts.

<sup>12</sup> Perquimans C. M., April, 1739.



the constable of his district summon the jury and give notice to the nearest justice to attend and qualify the jury.<sup>13</sup>

Should there be doubt in the minds of the justices as to the feasibility of a road, the court could have a preliminary survey made. For this purpose the Bertie Court named four men in February, 1731/32, to view the ground between Edmund Wiggons' plantation and his newly acquired ferry. The men were "to certify . . . under their hands whether they believed the sd Road if granted will be for the publick Good."<sup>14</sup> Two years later the men returned their approval, having "viewed the ground & having found it a place capable to be made a road of." The court then proceeded to appoint a jury to lay out the exact route.<sup>15</sup>

When at least twelve members of a road jury had qualified before a justice, they could proceed with their task. They might simply mark or notch trees, if such were available, and report to the court the general directions taken.<sup>16</sup> In open country, however, the task was more difficult. In 1746 a Bertie jury surveyed a route from the new causeway on Chowan River. They reported their route as beginning "at the foot of the Causway Running thence winding to the top of the Hill Then S 34 degs W to the head of a Bottom Then S 8 E to the old road Near Capt Jacksons fence in doing which we have prejudiced no private person."<sup>17</sup>

At times a road jury had difficulty in reaching a decision. In 1724 the Bertie Court ordered the provost marshal or his deputy to summon eight men for contempt in not laying out a road according to the court's previous order. In May, 1741, ten members of a road jury reported to the Bertie Court that the dissent of the other two jurymen obstructed their efforts to select a route. The court forthwith appointed four new men to the jury, any two of whom could act with the ten.<sup>18</sup>

<sup>13</sup> Bertie C. M., Nov., 1724. Also see Carteret C. M., Sept., 1734. Although a jury rarely awarded damages in laying out a road, the Chowan jury which laid out the road from Edenton to Hoskins' Mill in 1743 allowed damages of five shillings each to Hoskins, Miles Gale, and "Crisp's Plantation" (Chowan County Papers, III, 59).

<sup>14</sup> Bertie C. M., Feb., 1731/32.

<sup>15</sup> Bertie C. M., Feb., 1733/34. This procedure of a preliminary survey was an exception to the normal routine.

<sup>16</sup> Chowan County Papers, III, 4, 47.

<sup>17</sup> Report dated Sept. 13, 1746, Bertie County Miscellaneous Papers.

<sup>18</sup> Bertie C. M., Nov., 1724; May, 1741.

Once a road was established, there were few changes made in its route. In the first place, the people most frequently using the road, and hence most apt to complain, were those living in the neighborhood and maintaining the road. Any change would mean additional labor on their part. Secondly, by law no court could alter a road "to the prejudice" of any person without first obtaining that person's permission.<sup>19</sup> The General Court enforced this provision when the Chowan Court attempted to change the location of a road in 1722 without the consent of all the neighboring inhabitants. Upon receiving a petition of complaint, the General Court held a hearing and set aside the Chowan Court's order for a new road.<sup>20</sup> The restriction on the county court's power to change a road explains why it was the Assembly rather than the Chowan Court that ordered the new road from Edenton to the courthouse in Perquimans in 1743 when none of the existing roads were considered "convenient."<sup>21</sup>

The changes which did occur in the route of a road were usually minor and at the petition of the landowners themselves. John Pratt sought permission for a change from Perquimans Court as he neared the completion of his sawmill and gristmill. He asked that an adjacent road might "be turned a Small Matter for the Conveniency of the Mill he having the Consent of the Highwaymen and the turning of the Road being allready Marked." The court granted his request in April, 1741, a year after he had first made it.<sup>22</sup> In February, 1742/43, the Bertie Court authorized Thomas Barker, a justice, to alter the road which ran through his land "in such manner as it may be approved by Mr. William Taylor, Mr. Jacob Jernigan & Thomas Bond or any two of them."<sup>23</sup>

All men between the ages of sixteen and sixty were expected to work on the highways unless exempted by law, by resolution of the Assembly, or by order of a court. The law of 1715 provided that "no member of the Council or Assembly or Justice of any Court, Coroner or Constable or Minister of the Church of England shall be Compelled or Compellable to work himself that shall send three persons in one district to work on any Road or Bridge."<sup>24</sup>

<sup>19</sup> S. R., XXIII, 46 (1715, c. 36).

<sup>20</sup> General Court Minutes, March, 1723; C. R., II, 509-510.

<sup>21</sup> S. R., XXIII, 214 (c. 6).

<sup>22</sup> Perquimans C. M., April, 1741.

<sup>23</sup> Bertie C. M., Feb., 1742/43.

<sup>24</sup> S. R., XXIII, 48 (c. 36). Although these exemptions continued in effect in the northern counties, the act of 1745 provided more liberal exemptions

The Assembly exempted the physically disabled upon the recommendation of a precinct or county court.<sup>25</sup> In 1743 the Bertie Court allowed Colonel Robert West, its chairman, to keep four "hands" to operate his ferry, the four men being exempted from working on the roads.<sup>26</sup>

A court made adjustments in the road districts as the population shifted. In 1737 the Perquimans Court increased the number of men working on the Deep Creek Road by extending the area from which the men were drawn for the road company. This section was taken after John Parish, Jr., petitioned the court that there were only seven out of an original eleven men assigned in 1729 to maintain the road which was about seven miles long and covered "bad ground."<sup>27</sup> In 1745/46 the Chowan Court formed two separate companies from the workers of a road company after they had petitioned the division.<sup>28</sup>

The act of 1715 specified that the precinct courts should appoint the surveyors or overseers of the roads annually. The Bertie Court endeavored to observe this provision, making its appointments during the February term; however, the justices occasionally continued a few of the incumbents until the next February.<sup>29</sup> On the other hand, the Chowan Court followed no set rule in changing its overseers. The justices made some appointments at almost every term of court and often permitted the overseers to remain in office for more than a year.<sup>30</sup> The overseers were frequently men of prominence in the county, sometimes the justices themselves.

The quality of a road depended to a degree upon the diligence of its overseer. He was required by law to summon the male tithables of his company to work on the roads and bridges within his division at some convenient time during the months of April

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for the southern counties. A man would be exempt if he were a member of the council or the Assembly, justice of the peace, coroner, clerk of any court, attorney at law, constable, clergyman, schoolmaster, physician, surgeon, ferry keeper, miller, or if he sent at least three persons out of his own family to work on the roads (*S. R.*, XXIII, 228 [c. 5]).

<sup>25</sup> *C. R.*, II, 303; IV, 828; Craven C. M., June, 1744; Sept., 1746; Hyde C. M., Dec., 1746.

<sup>26</sup> Bertie C. M., Nov., 1743.

<sup>27</sup> Perquimans C. M., April, July, 1737.

<sup>28</sup> Chowan C. M., Jan., 1745/46; Chowan County Papers, III, 149.

<sup>29</sup> Bertie C. M., May, 1735; May, 1741.

<sup>30</sup> Thomas Hoskins became overseer in Chowan in January, 1740/41, and remained in office for three years (Chowan C. M., Jan., 1740/41-Jan., 1743/44).

and September and at any other time that occasion required. He checked the attendance of the tithables and had the nearest justice of the peace impose a fine<sup>31</sup> upon any person who, being duly summoned, neglected or refused to do his part, unless the person presented an acceptable explanation for his default.<sup>32</sup> The overseer could use the proceeds from the fines to hire other laborers or to divide among the men of the company who did the work.<sup>33</sup> If an overseer failed to keep the roads and bridges of his district in satisfactory repair, he himself was subject to a fine.<sup>34</sup>

Legislation prescribed certain standards for maintaining the roads. The act of 1715 required that:

all publick roads . . . shall be cleared of and from all Trees & Brush at least Ten Feet wide & such Limbs of Trees cut away as may incommode horsemen travelling that road. All Bridges or Causeways made or to be made over Swamps or small Runs of Water the pieces wherewith the same shall be made shall be laid athwart the road & at least Ten foot long well secured & made fast & covered with Earth & all Bridges over Deep & navigable streams shall be made at least ten foot wide with sufficient and strong pieces or plank at least Three Inches thick with firm & strong Post & Bearers well secured and fastened.<sup>35</sup>

In 1734 the minimum width of public roads in Albemarle County was changed to twenty feet, but ten feet remained the legal mini-

<sup>31</sup> Under the act of 1715 the fine for each day's neglect or refusal was five shillings. The acts of 1734 increased the amount to ten shillings in the northern precincts and to twenty shillings in the southern section. In 1745 the fine became two shillings eight pence, proclamation money, for the southern section.

<sup>32</sup> The overseer could also recover the fine of a delinquent by obtaining a judgment from a county court. For a judgment against John Wright by the Pasquotank Court in 1741, see *Pasquotank Executions, 1729-1755*. Two Perquimans justices ordered delinquents to satisfy their obligations by working on a new road instead of paying a fine. A jury upheld this judgment in a trial after the defendants appealed their case to the county court (Warrant dated May 15, 1749, *Perquimans Court Papers, 1709-1848*).

<sup>33</sup> The Bertie Court ordered James Wood, overseer of the Ahosky Road, to make a distribution of the funds among the workers after one of the men working on the road made a complaint (Bertie C. M., May, 1732). The minutes of the Perquimans Court indicate another use for the funds in the hands of the overseer. Upon hearing the complaint of Thomas Blitchenden that Moses Eliott's road company had used some of his timber without permission, the court ordered Eliott and his men to pay Blitchenden three pounds and costs (*Perquimans C. M., Oct., 1735*).

<sup>34</sup> *S. R., XXIII, 46-48* (1715, c. 36), 118-119 (1734, c. 6). The overseer's fine under the act of 1715 was forty shillings, but the act of 1734 increased it to ten pounds. No fines were specified for a commissioner's neglect of his duty in the southern section of the province.

<sup>35</sup> *S. R., XXIII, 47* (c. 36).



num for the roads in the southern half of the colony and for the bridges throughout the entire province.<sup>36</sup>

The Bertie Court expected its overseers and road companies "to post & measure their roads."<sup>37</sup> The court elaborated upon these instructions when making a general effort to improve the roads in 1744. The companies were to measure the length of the roads they worked upon and to check and confirm the bounds with the adjacent companies. Moreover, orders were given for "all publick Roads within the said County [to] be posted to & from the Court House & to & from all publick Ferrys within the same & that at Every fork of Every road a post be sett up Directing to what place such road Leads to."<sup>38</sup>

When a court wanted a bridge built over a sizable creek or river, the job of erecting the structure was sometimes too great for a single road company. In such cases the court appointed an overseer for the bridge and assigned to several road companies the responsibility for its construction and maintenance.<sup>39</sup> Since it was sometimes impractical for such a large number of men to work on the bridge, a contract for the task could be made upon the approval of the majority of the men involved. When the Bertie Court decided to replace Jarnagan's ferry over Meherrin Creek with a bridge in 1737, it obtained the agreement of a majority of the companies for an assessment. The court then imposed a levy of seven shillings six pence on the members of the sixteen companies assigned to the bridge and permitted Alexander Cotten, the overseer, to make a contract for its construction.<sup>40</sup>

When a court received a complaint that a navigable creek needed to be cleared, the court assigned the task to as many of the road companies near the creek as was necessary to accomplish the work. As in the case of building Jarnagan's bridge, the Bertie Court appointed a special overseer to supervise the clearing of

<sup>36</sup> S. R., XXIII, 119 (c. 6).

<sup>37</sup> Bertie C. M., Nov., 1735.

<sup>38</sup> Court Order, May, 1744, Bertie County Miscellaneous Papers; Bertie C. M., Feb., 1743/44.

<sup>39</sup> John Alston, Esq., was the overseer of Bennett's Creek Bridge in Chowan (Chowan C. M., Jan., 1745/46). The Craven Court planned such a co-operative effort in 1741 (Craven C. M., March, 1740/41).

<sup>40</sup> Bertie C. M., May, 1737; May, Aug., 1739. The Bertie Court had followed this same procedure in 1731 when it had a bridge built at the same site. This earlier bridge was destroyed by a flood in 1735 (Bertie C. M., Nov., 1731–May, 1732; Aug., 1735).

Wiccacon Creek to the landing of John Early, Jr. In February, 1738/39, the court appointed John Rasberryseed as overseer and assigned him two companies for the job. During the ensuing years some of the members of the two companies claimed that the creek was not navigable to Early's landing. To settle the dispute the court appointed five men in 1743 to examine the creek and to determine what part was navigable. When their report confirmed the distance to the landing, the court endeavored to satisfy the complaining faction. The justices formed a special company to keep the creek cleared and exempted the personnel of the company from work on any roads.<sup>41</sup>

In 1735, after the introduction of a different system of road administration in the southern part of the province, the precinct courts in that section appointed commissioners of the roads to assume the responsibility of laying out and repairing roads and bridges and clearing creeks.<sup>42</sup> Meeting at the courthouse or any other convenient place as often as they thought proper, the commissioners were to hear petitions for new roads, to appoint road juries, to name overseers, to regulate the membership of the companies, and to establish the dates for the companies to repair the roads and bridges.<sup>43</sup>

The act of 1734 was only the first of several laws regulating the supervision of roads in the southern section of the province. It was repealed in 1741 by an act of which only the title is extant. This title, however, indicates that the Assembly rather than the individual court appointed the commissioners for each county.<sup>44</sup> When the act of 1741 expired in 1744, the courts of the southern counties resumed temporarily the administration of the roads, bridges, and creeks.<sup>45</sup> But in 1745 the Assembly again enacted a

<sup>41</sup> Bertie C. M., Feb., 1738/39; Nov., 1743, NCDAH; Bertie C. M., May, 1744, *North Carolina Historical and Genealogical Register*, II (1901), 620.

<sup>42</sup> Onslow C. M., July, 1735; Carteret C. M., June, Dec., 1735; Craven C. M., June, 1737; June, 1738.

<sup>43</sup> "An Act for laying out making altering and keeping in repair the several Roads and highways within the several Precincts of the County of Bath, and for building Bridges, and cleansing and keeping clean the several Rivers and Creeks within the same," N. C. Acts, 1734, C. O. 5/333, P. R. O.

<sup>44</sup> "An Act to empower the several Commissioners herein named, to make, mend, and alter the several Highways, Roads and Bridges, and to clear and cleanse Creeks and Water-Courses; and also, to cut such Cuts as they shall think convenient, in the several Counties herein named," S. R., XXIII, 161 (c. 2).

<sup>45</sup> Carteret C. M., June, 1744; Hyde C. M., June, 1744; March, 1744/45.

law appointing commissioners and assigned them to specific districts. The commissioners of a county, or a majority of them, again possessed authority over roads, bridges, and creeks equivalent to that of a county court in the northern section of the province. They transacted their business at the courthouse in scheduled meetings on the second Monday after Easter and the first Monday in August and at such other times as were necessary. The commissioners of each district divided their territory into sections, each under a commissioner. In this capacity the individual commissioner resembled a road surveyor of the northern county; however, if he preferred, the commissioner could appoint an overseer to supervise the actual work in his section.<sup>46</sup>

Despite the concentration of authority in the hands of the commissioners, the courts of the seven southern counties<sup>47</sup> retained some vestige of control over their roads. In the case of a vacancy among the commissioners, the justices together with the remaining commissioners of the district made the new appointment. The courts also heard and determined in a summary manner the appeal from any order or sentence of the commissioners. In Hyde County during 1749 the justices exercised these powers by removing Daniel Holland as a commissioner after numerous complaints had been received and by appointing Nathaniel Eborn as his successor with the concurrence of the other commissioners of the district.<sup>48</sup>

Roads and bridges were only two of the essentials for travel in colonial days. Another was ferries. Unlike the supervision of roads and bridges the local court's authority over ferries was uniform throughout the province. The courts could "appoint & settle" the ferries and regulate the rates. After 1734 the courts were required to have all persons keeping ferries give security in the sum of one hundred pounds, current money, that they would "constantly find, provide, and keep good, sufficient Boats, or other proper Crafts, in good Repair, always to be well attended for Transportation of Travellers, their Horses, Cattle, Carts or Carriages."<sup>49</sup>

The minutes of Perquimans Precinct Court for its April, 1736, term contain the details of the establishment of a ferry. John

<sup>46</sup> S. R., XXIII, 220-224 (c. 5).

<sup>47</sup> Bladen, New Hanover, Onslow, Carteret, Craven, Beaufort, and Hyde.

<sup>48</sup> Hyde C. M., June, 1749.

<sup>49</sup> S. R., XXIII, 118 (1734, c. 6). For some bonds of ferry keepers, see Chowan County Papers, III, 20, 25, 139.

Powel, the deputy marshal for the precinct, asked the court that he be allowed to operate a ferry from Phelp's Point to Nathan's Point. The justices gave their approval, provided Powel posted the proper bonds by June 1. Powel's rates were set at 2s. 6d. for a man and a horse and 1s. 6d. for a man alone. The ferry was to be attended "From the hour of four a Clock in the morning to Ten a Clock at night from the Tenth of March to the Tenth of October and from the hour of Six a Clock in the morning to the hour of Eight a Clock at Night from the Tenth day of October to the Tenth day of March and to have double firrages [*sic*] after Those hours." In response to Powel's request for liberty to attend divine service on Sunday the court agreed to exempt him from ferrying anyone "on the Lords Day from ten in fore noon until four after provided he be at the place of worship."<sup>50</sup>

Since each court could regulate ferry rates as it pleased, the charges varied from ferry to ferry. The Bertie Court set one of the lowest schedules in 1735 when it permitted Henry Jarnagan to operate a ferry over Meherrin Creek at site of the recently destroyed bridge. Jarnagan could charge only 1s. for a man and a horse and 6d. for a man by himself.<sup>51</sup> On the other hand, the rates which the Chowan Court allowed John Arthur for a trip from Edenton to Bell's Landing in Tyrrell County were much larger. Arthur could charge 40s. per man and horse and 20s. per man.<sup>52</sup> If a ferry keeper became dissatisfied with his schedule of charges, he could seek relief from the court. When Thomas Hansford, a justice, informed the Bertie Court in 1740 that 7s. 6d. per man and horse was "an Insufficient competency for the expence of keeping ferry" over the Chowan River, the court increased the rate to 10s.<sup>53</sup>

The acts of 1715 and 1734 endeavored to protect the interests of ferry keepers by authorizing penalties for persons "pretending to keep ferry" within ten miles of a duly appointed ferry on the same river or creek. The 1734 act increased the penalty from ten shillings to five pounds for each offense.<sup>54</sup> Since the ferry keeper who was injured had to initiate the action to recover the penalty, Thomas Jackson, a ferryman and justice of Bertie County, lodged a complaint against Solomon Pindar before two justices in 1747

<sup>50</sup> Perquimans C. M., April, 1736.

<sup>51</sup> Bertie C. M., Aug., 1735.

<sup>52</sup> Chowan County Papers, III, 23.

<sup>53</sup> Bertie C. M., Aug., 1740.

<sup>54</sup> S. R., XXIII, 47 (1715, c. 36), 118 (1734, c. 6).



in his effort to collect the twenty-five pounds Pindar should forfeit for unlawfully transporting five men across the Chowan River.<sup>55</sup>

Before a ferry keeper could discontinue operating his ferry, he had to obtain the court's permission or else he would forfeit his bond. A court often required him to continue operations for a brief period so that notice could be made of the discontinuance or to permit a successor to qualify. In September, 1740, the New Hanover Court ordered Colonel Thomas Merrick to continue keeping his ferry at Brunswick for a month after court unless in the meantime some "proper" person gave security for keeping it. The following year the same court agreed to discharge Henry Simons from his bond for the ferry at Old Town Creek at the end of fourteen days.<sup>56</sup> The Chowan Court accepted Joseph Blount's resignation in July, 1742, and made it effective immediately since someone else had applied to keep the ferry.<sup>57</sup>

<sup>55</sup> Writ dated April 28, 1747, Bertie County Miscellaneous Papers.

<sup>56</sup> New Hanover C. M., Sept., 1740; June, 1741.

<sup>57</sup> Chowan C. M., July, 1742.

## C H A P T E R X

# Administrative Powers of the Court

## Regulation of Business

In an effort to advance the welfare of the inhabitants of the province the Assembly authorized the precinct courts to assist millers in obtaining the land best suited as sites for gristmills. Anyone desirous of erecting a mill could petition his local court for in order to have surveyed as much as two acres for a water mill or half an acre for a windmill on any man's land, provided the election did not injure a garden or orchard. The owner could forestall selling the plot if he gave security for building a "substantial working mill" on his land. However, if the owner were unwilling to do this, the petitioner could obtain the plot at a price established by four appraisers appointed by the court. He could buy the land on the condition that he erect the mill and have it in operation within the space of two years.<sup>1</sup>

All mills built in the above manner were considered as "Public Mills." Their owners were required to grind the wheat and corn of all persons so desiring and to return to each his own goods less the lawful toll. The miller's toll was an eighth part of wheat or a sixth part of corn. The penalty for charging excessive rates was ten times the value of the grain.<sup>2</sup>

Although the precinct courts were approving sites for mills as early as January, 1699/1700,<sup>3</sup> the people of North Carolina suffered through several decades for the want of sufficient mills. In 1709

<sup>1</sup> S. R., XXIII, 48-49 (1715, c. 37).

<sup>2</sup> S. R., XXIII, 49 (1715, c. 37).

<sup>3</sup> The Perquimans Court agreed to a mill site at the head of Indian Creek for James Coles in 1699/1700 (Perquimans C. M., Jan., 1699/1700; C. R., I, 531).

the Anglican missionary William Gordon recorded a description of the life and diet in Chowan and Perquimans precincts, stating that: both are equally destitute of good water, most of that being brackish and muddy; they feed generally upon salt pork, and sometimes upon beef, and their bread of Indian corn which they are forced for want of mills to beat; and in this they are so careless and uncleanly that there is but little difference between the corn in the horse's manger and the bread on their tables: so that with such provisions and such drink (for they have no beer), in such a hot country, you may easily judge, sir, what a comfortable life a man must lead; not but that the place is capable of better things, were it not overrun with sloth and poverty.<sup>4</sup>

Baron de Graffenried also described the colonists' difficulties without mills, although he reported that some progress was being made by his settlers at New Bern before the outbreak of Indian trouble in 1711:

there was, in the whole province [so he wrote], only one wretched water mill: the wealthiest people use handmills, and the poorer class are obliged to pound their grain in mortars made of oak, or rather tree-stocks which are dug out, and, instead of sifting it in a regular sieve, they shake it barely in a kind of basket, which operation, of course, occasions much loss of time. On the contrary, our people found out brooklets, convenient to build on them a kind of wheelworks connected with pestles which they put in motion, so by means of water power they pounded their grain, & had their time left for other work, what did them much good. I had myself already begun the construction of a very convenient watermill.<sup>5</sup>

Two decades later John Brickell found that there were no windmills in the province and only two or three water mills. For the most part the inhabitants still used hand mills to grind their corn and wheat. Because of the scarcity of water mills Brickell stated that the mill proprietors commonly took every other barrel as toll despite the law.<sup>6</sup>

During the 1740's the number of water mills in the province increased. Petitions for mills became a frequent item of business

<sup>4</sup> C. R., I, 713-714. In this letter to the Secretary of the Society for the Propagation of the Gospel Gordon did add to this account that there were "some exceptions, as few as you please, there being, here and there, a gentleman whose substance, sense of managing, and methods of living, somewhat exceed the rest" (C. R., I, 715).

<sup>5</sup> C. R., I, 913. Also see Vincent H. Todd, ed., *Christoph von Graffenried's Account of the Founding of New Bern* (Raleigh, 1920), pp. 287-288, 315.

<sup>6</sup> Brickell, *The Natural History of North Carolina*, pp. 263-264.

during the court term. The person desiring to build a mill often chose a site on a stream adjacent to his own land. In seeking permission from the Bertie Court in 1743 to build a mill on Flaggy Run, John Harrell, Esq., wanted to secure an acre of land on the opposite bank belonging to the heirs of Francis Pugh. The court summoned Thomas Barker, their guardian, to declare any desire they might have in erecting a mill. Upon Barker's relinquishment of his wards' rights, the court granted Harrell its permission to build.<sup>7</sup> When Edward Pierce did not appear to answer Samuel Martin's petition to build a mill on Maul's Run, the Craven Court appointed four men to appraise one acre of Pierce's land "to the best convenience of a mill."<sup>8</sup> The Pasquotank Court omitted the procedure of appointing appraisers in authorizing William Williams to build a mill over Mavoll Swamp. The justices merely ordered that "the neighbors have notice."<sup>9</sup>

About the time that the courts began to receive an increasing number of petitions for mills, the courts obtained another administrative power—the regulation of the standard weights and measures. The establishment of public warehouses throughout the province in 1739 and 1740 led indirectly to the transfer to the county courts of this power that the vestry had held for forty years. A few months after the enactment of legislation establishing parishes in 1701, the Assembly had delegated to the vestries the responsibility for providing standard weights and measures and entrusting their safekeeping to the eldest church warden or some other reliable person. The standard keeper's duties were to inspect and verify all weights and measurements used in trade and commerce within the bounds of the parish and to prevent the use of false or inaccurate ones.<sup>10</sup> However, since certain weights and measures were essential to the receipt of the commodities paid in for taxes, the Assembly authorized the courts in 1740 to secure whichever ones were needed at the warehouses. Since the vestries had become lax in enforcing the weights and measures act, the Assembly authorized the courts in 1741 to assume responsibility for the standards. The justices of each county had power to take into their custody

<sup>7</sup> Bertie C. M., May, Aug., 1743.

<sup>8</sup> Craven C. M., Sept., 1743.

<sup>9</sup> Pasquotank C. M., April, 1746.

<sup>10</sup> Legislation pertaining to weights and measures was passed in March, 1701/02, but the oldest extant law is that of 1715 (C. R., I, 558; S. R., XXIII, 53-54 [1715, c. 39]).



all weights and measures previously provided for their respective county or parish, to purchase any others needed, and finally to appoint a standard keeper to perform the customary duties of that office.<sup>11</sup>

In accordance with the act of 1741 the Craven Court, at its June term, agreed with Captain Thomas Pearson, a justice, to have him send to Boston for the standards the county needed and an additional beam and weights for the warehouse. The standards for the county consisted of "weights beginning at a Dram & so Regular to an ounce & then Regular to a pound & Regular weights as usually to 50 lb . . . a yard according to Statute of Brass & Till measure one  $\frac{1}{2}$  pt: pt qrt & Gallon of Pewter according to the English wine Measure." For his efforts the court agreed to pay Pearson 150 per cent of the prime cost of the articles.<sup>12</sup>

At the same term of the Craven Court the justices appointed John Bryan, Esq., the inspector, to keep the standards and required him to give security of a hundred pounds for the proper performance of his duties.<sup>13</sup> Bryan was ordered to secure a brand for marking wooden measures and a stamp for marking measures of brass, tin, iron, lead, or pewter.<sup>14</sup> The standard keeper used the stamp or brand to mark all weights and measures with the letters "N. C." as proof of their accuracy. The remuneration of the office was the ninepence, proclamation money, fee for each item he stamped or branded. He also obtained a third share of the twenty-five-pound fine imposed on anyone convicted of the possession of falsified weights or measures.<sup>15</sup>

<sup>11</sup> S. R., XXIII, 178-180 (c. 17).

<sup>12</sup> Craven C. M., June, 1741. The authorized weights in the range from one to fifty pounds were one, two, four, seven, twenty-five, and fifty. The prescribed standards which the court did not order were the half pound weight; the ell, a rule of forty-five inches; the pottle, a two-quart wine measure; and the dry measures of a gallon, peck, and half bushel (S. R., XXIII, 178 [1741, c. 17]). The Craven Court had ordered a half bushel and a yard as standards in March (C. M., March, 1740/41). The earlier laws prescribed fewer items as standards (C. R., I, 569; S. R., XXIII, 53 [1715, c. 39]).

<sup>13</sup> The Onslow Court also appointed the inspector as the standard keeper (Onslow C. M., Oct., 1742). Unlike many of the other courts the justices of Carteret and Chowan picked men as standard keepers who were not fellow justices (Carteret C. M., Sept., 1742; Chowan C. M., April, 1746).

<sup>14</sup> Craven C. M., June, 1741.

<sup>15</sup> S. R., XXIII, 179-180 (1741, c. 17). The remainder of the fine was divided between the informer and the county. There was also a ten-pound fine for using in trade weights or measures not stamped or branded, but the standard keeper did not share in this unless he brought suit for the offense.

Whereas the county courts obtained their authority over weights and measures by a single act, they secured their regulatory power over ordinaries and taverns by degrees.<sup>16</sup> The courts had little responsibility over ordinaries under the earliest extant law pertaining to them. The act of 1715, which Governor Burrington described in 1731 as "a very old Law,"<sup>17</sup> required all retailers of "Wine, Beer or other strong drink" to obtain a license from the governor and to give a bond for their due observance of the law. The fee for the license varied, two pounds if obtained at a precinct court and four pounds at the General Court.<sup>18</sup> Except for imported English drinks, which could be sold in the original bottles, the ordinary keeper had to use the sealed measures of pints, quarts, pottles, and gallons in dispensing his drinks. Price regulation was also a feature of the act. Twelve pence was the most anyone could charge for a meal, one shilling sixpence for each gallon of home-made beer or unboiled cider, and a mark-up of 100 per cent on other drinks.<sup>19</sup>

Soon after 1715 an abuse appeared in the operation of ordinaries. Under the provision that the ordinary keeper could have a profit of 100 per cent on most of his drinks, the ordinary keepers were charging extravagant prices by 1720. To remedy this the Assembly authorized the precinct courts to set "the price of all Liquors to be sold by Ordinary Keepers, all dyetting and Lodging people, Pasture and Provender for Horses." A court could change the rates at any term. The clerk was required to furnish a table of rates to each of the ordinary keepers which the latter had to keep posted in "the open and common Room where such Ordinary is." To increase the effectiveness of the new regulations, the Assembly set the penalty for charging excessive rates at five pounds for each offense instead of treble the cost.<sup>20</sup>

Even when the courts established the rates, the regulation of ordinaries continued to be a problem. The penalty of forty shillings, current money, for selling liquor without a license was not

<sup>16</sup> The term "ordinary" was generally used to include taverns, tippling houses, and inns.

<sup>17</sup> *C. R.*, III, 187.

<sup>18</sup> *S. R.*, XXIII, 83 (1715, c. 58).

<sup>19</sup> *S. R.*, XXIII, 79-80 (1715, c. 53).

<sup>20</sup> *S. R.*, XXV, 169 (1720, c. 4).

severe enough to be effective.<sup>21</sup> An even more glaring fault was the method of indiscriminate licensing. The governor himself appealed to the Assembly to have it restricted.<sup>22</sup> In 1741 the Assembly revised the legislation pertaining to ordinaries and endeavored to increase the county courts' control over the operation of ordinaries. The new act established a fine of five pounds, proclamation money, for anyone retailing strong drinks for consumption on their premises without a license.<sup>23</sup> To secure a license for keeping an ordinary a person had to obtain the approval of the county court and give security of thirty pounds, proclamation money. The justices were to decide whether it was "convenient" for such an establishment to be set up in the location desired, whether the petitioner was likely to comply with the law, and whether the surety of the bond was responsible. The license remained in force for only a year and was subject to revocation under certain circumstances. Upon receiving sworn evidence from a credible witness that an ordinary keeper had permitted unlawful gaming in his house or had suffered anyone to drink more than was "necessary" on Sunday, or had harbored any seaman, servant, or slave without his master's permission, any two justices of the peace could suspend the ordinary keeper's license until the next county court. The court could clear the ordinary keeper of the charges or continue the suspension until it saw fit to restore the old license or issue a new one.<sup>24</sup>

With the introduction of annual licenses petitions for "the liberty to keep ordinary" were submitted in considerable number to each of the county courts. The Chowan Court alone issued fifteen licenses during the year of 1743. Ordinarily the courts granted the petitions; however, once in a while they refused to issue a license.<sup>25</sup> In submitting the petition a person sometimes employed one of the lawyers attending court to take care of the

<sup>21</sup> Perquimans C. M., July, 1735; Bertie C. M., Feb., 1736/37.

<sup>22</sup> C. R., IV, 472.

<sup>23</sup> A person did not need a license to sell wine, brandy, rum, or spirits in quantities of one quart or greater, or ale, beer, or cider in quantities of a gallon or more, if these drinks were not consumed at the house, store, or plantation where they were sold. Thus, the license was for a retailer, not the wholesaler.

<sup>24</sup> S. R., XXIII, 183-184 (c. 20).

<sup>25</sup> Chowan C. M., Oct., 1741; July, 1742; Jan., 1745/46; Chowan County Papers, III, 39.

matter.<sup>26</sup> Women as well as men operated ordinaries, although in fewer numbers.<sup>27</sup> Certain operators welcomed the opportunity to combine the business with their other activities. Nicholas Routledge, the clerk of Craven County, kept an ordinary at his house in New Bern;<sup>28</sup> and Francis Stringer, a justice of the same county, operated one at his ferry landing on the Neuse River.<sup>29</sup> Thomas Black's ordinary in the town of Johnston served as the site for the Onslow Court meetings when the county was without a courthouse.<sup>30</sup>

The courts sometimes enforced the punitive provisions of the 1741 act. John Arthur of Chowan had his license suspended temporarily because of the representations of several people, but when the court met in January, 1741/42, he proved his claim of innocence and regained his license.<sup>31</sup> In July the Chowan Court fined Elizabeth Lipscombe five pounds, proclamation money, for selling liquor without a license.<sup>32</sup>

Another feature of the act of 1741 was that the county court's setting of the maximum rates to be charged at the ordinaries became an annual task during the quarter beginning with May. As before, when the prices were established, the clerk made copies of the rates to be posted in each ordinary. The penalty for overcharging was set at ten shillings, proclamation money, all of which went to the informer.<sup>33</sup>

Since each court was free to set the maximums it pleased, the rates for the different counties varied. The following rates in current money were established for Chowan and New Hanover in 1741:<sup>34</sup>

<sup>26</sup> Chowan C. M., Oct., 1741; Craven C. M., June, 1742.

<sup>27</sup> Chowan C. M., July, 1741; Pasquotank C. M., Jan., 1742/43.

<sup>28</sup> Craven C. M., June, 1741.

<sup>29</sup> Craven C. M., March, 1744/45.

<sup>30</sup> Onslow C. M., 1748-1749. In 1749 the governor and council endeavored to discourage sheriffs from operating ordinaries. The council issued an order that the county courts should not recommend to the governor for an appointment as sheriff anyone who operated an ordinary (C. R., IV, 951).

<sup>31</sup> Chowan C. M., Jan., 1741/42.

<sup>32</sup> Chowan C. M., July, 1742.

<sup>33</sup> S. R., XXIII, 183 (c. 20).

<sup>34</sup> Chowan C. M., July, 1741; New Hanover C. M., June, 1741. For other rates of that year, see Carteret C. M., June, 1741; Craven C. M., June, 1741. In April, 1741, the Pasquotank Court decided to adopt the rates which the Chowan Court established (Pasquotank C. M., April, 1741). The ratio of current money to sterling was ten to one.



	Chowan			New Hanover		
	£	s.	d.	£	s.	d.
Rum pr Gallon & so in Proportion .....	2	0	0	2	6	0
Madiera Vidonia & other wines pr quart & so in proportion .....	15	0		17	6	
One Quart of Flip with a halfpint of rum in it .....	4	0				
Carolina Cyder pr Quart .....	1	0				
Northern Cyder pr Quart .....	2	0		6	0	
Strong Malt Beer of American pr quart	3	0		6	0	
Ditto of Brittain pr quart	5	0				
A Quart of punch with lime Juice loaf of Sugar & half pint of Rum	6	0		7	6	
Dyot of Fresh meat Whole Bread & Small Beer .....	5	0		7	6	
Lodging pr Night .....	2	6		2	6	
A Gallon of oats or Corn .....	2	6				
Pasterage for a horse for 24 hours .....	1	3		2	6	
Clarit per Bottle .....	1	5	0	1	0	0
One Quart Punch with Brown Sugar	4	6				
A Breakfast .....	5	0		5	0	
British ale or Beer bottled in great Brittain .....	10	0		15	0	
West Indian Rum pr gallon & in proportion for lesser quantities .....				4	0	0
Stabling with fodder per day & night ...				3	6	

Proportionally for a greater or less quantity

There was a tendency for the rates to remain the same from year to year, but the courts were responsive to the complaints of the ordinary keepers. In 1746 the Chowan Court granted the petition of the ordinary keepers of Edenton and increased the charges on several types of drink and on pasturage as much as 33 per cent.<sup>35</sup>

<sup>35</sup> Chowan C. M., July, 1746.

## Conclusion

The county court of North Carolina, as it developed through the Colonial period, gave to the inhabitants an institution of local government adapted to their needs. Originally its function was to relieve the General Court, composed of the governor and council, from trying petty civil cases and probating routine records. As the colony developed, the county court's authority expanded until it included criminal as well as civil jurisdiction and administrative powers adequate for an agricultural community. With these powers the county court resembled closely the English quarter sessions court and the Virginia county court.

The origin of the county court was in the provisions of the Fundamental Constitutions which the Proprietors adopted for their colony of Carolina in 1669. Although the Proprietors were never able to establish all of the elaborate features of this plan, the northeastern section of the province, which had been organized into Albemarle County in 1664, was subdivided into four precincts. In each of these precincts the governor and council established a court organized along the lines set forth in the Fundamental Constitutions. As late as 1690 the commissions of the peace still authorized the precinct courts to exercise the powers prescribed in the Fundamental Constitutions—a jurisdiction over criminal offenses not punishable by loss of life or limb and over all civil cases, the personal actions for more than fifty pounds, sterling, being subject to appeal to a higher court.<sup>1</sup> In practice, however, the courts did not exercise such extensive authority. As

<sup>1</sup> No provision was made for appealing criminal cases to higher courts.

long as the province of North Carolina consisted of only the four precincts north of Albemarle Sound, the General Court and the Assembly exercised jurisdiction over important cases and administrative matters.

Before the end of the seventeenth century the Proprietors encouraged settlement south of Albemarle Sound, and in 1696 they incorporated into North Carolina the coastal area north of the Neuse River. Their interest declined in perpetuating all of the provisions of the Fundamental Constitutions already in effect. Although the civil jurisdiction of precinct courts was reduced to a maximum of fifty pounds, current money,<sup>2</sup> the authority of the courts was broadened to include a few administrative as well as judicial powers. The courts began to issue franchises for grist-mills, to regulate the laying out and maintenance of roads, and to appoint road overseers and constables.

The precinct courts gained additional powers slowly. By 1722 they had some control over ordinaries and could levy taxes to pay for the construction of courthouses. When the precincts were renamed counties in 1738/39, the provincial government began to delegate more and more authority to the local courts. Within a decade the county court received authority to summon a grand jury, have a prosecuting attorney to assist in trying offenses not punishable by death, and determine civil cases for sums larger than fifty pounds. At first the maximum was increased to one hundred pounds but later was set at one hundred and fifty pounds, current money, the latter being equivalent to fifteen pounds, sterling. The court began to appoint such county officials as the inspector of commodities and the standard keeper and to nominate the sheriff.<sup>3</sup> The court was required to erect and maintain a jail and a public warehouse as well as its courthouse. The increasing authority also included the levying of annual taxes and the more effective regulation of the inspection of weights and measures and the operation of ordinaries. The number of justices appointed to the court in each county increased during the eighteenth century. Instead of the five authorized for each court by the Fundamental Constitutions the total for a court after

<sup>2</sup> Since the currency is not specified as "Sterling," it is presumed to be current money, as was the case in later years.

<sup>3</sup> Between 1740 and 1743 a court nominated its clerk. In 1743 each court was required to appoint a man to keep the ammunition magazine. This was an emergency duty which expired in two years.

1731 averaged twelve to fourteen, the presence of at least three members being necessary to hold a court.

The powers which the North Carolina county court had gained by 1750 permitted that body to exercise a jurisdiction comparable to that which the quarter sessions court in England had enjoyed for several centuries. This English court was one held four times a year by any two or more justices of the peace in a county. At the sessions of this court the criminal jurisdiction of the justices of the peace extended to all felonies and misdemeanors; however, in practice, the justices seldom, if ever, tried any offense for which the punishment was loss of life or limb. Although the justices' authority in civil actions was very limited in England, they exercised extensive administrative powers. At their quarter sessions the business included the repair of bridges, maintenance of jails and houses of correction, establishment of wages, licensing of traders, sanction of special levies for the parish needs, and confirmation or disallowance of the orders issued by justices between court terms. Other administrative duties were discharged at the "special sessions" held monthly by any two or more of the justices or at the "petty sessions" held by one or more of the justices whenever necessary.<sup>4</sup>

In Virginia the county court acquired some of the powers of the English quarter sessions court. At the time of the organization of counties in Virginia in 1634 the Assembly established a court in each of the counties with the power to act in criminal cases not involving life or limb and in all civil cases, actions for debts or demands exceeding ten pounds, sterling, being subject to appeal. During the three decades which followed, the county court received authority to become a court of record for deeds, powers of attorney, etc., to serve as a probate court and orphans court, and to exercise administrative control over county finances, roads, taverns, and weights and measures. Although eight justices of the peace were appointed to each county court in Virginia, the presence of only four of this panel was necessary for the court to consider any case or business at its monthly meetings.<sup>5</sup>

<sup>4</sup> For a thorough study of the justices of the peace in England during this period, see Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County* (London, 1907).

<sup>5</sup> Craven, *The Southern Colonies in the Seventeenth Century, 1607-1689*, pp. 167-172, 269-294; Hening, *The Statutes at Large*, V, 489-508.



Because the county courts in England, Virginia, and North Carolina were all inferior courts with a limited jurisdiction over civil and criminal cases and in administrative matters, some evidence of direct influence of the English and Virginia courts on those in North Carolina could be expected. Two direct references appear in the records. The North Carolina court act of 1738/39, which specified the criminal jurisdiction of the county court, directed its justices to act "agreeable to the Method and Practice of the Justices of the Quarter Sessions in the respective Countys in England."<sup>6</sup> Prior to the passage in the same year of the act replacing the office of provincial provost marshal with that of sheriff, Governor Johnston had reported to the Board of Trade the need for "Sheriffs as they have in Virginia" and had stated that the people were "strangely bent upon having them established by law."<sup>7</sup> In both Virginia and North Carolina the early inferior courts seem to have been intended to relieve the provincial government of its less important transactions. Then, as the population increased and moved into regions more distant from the seat of the provincial government, the legislature gave the county courts powers comparable to the English court of quarter sessions. Therefore, the effect of an increase in distance was a decentralization in the government.

The later settlement and smaller population of North Carolina doubtless account for the fact that its county court was almost a century behind the Virginia court in obtaining comparable judicial and administrative powers. The greatest increase of the North Carolina court's authority occurred during the administration of Governor Johnston (1734-1752), when the population of 45,000 almost doubled itself and the colonists extended their settlements along the entire seaboard and into the Piedmont.

The members of the county courts had a part in enlarging the powers they exercised as a court. During the period from 1734 to 1750 more than half of the membership of the lower house of the Assembly and all of the council, or upper house, except the chief justice, were justices of the peace in the counties.<sup>8</sup> Because

<sup>6</sup> "An Act for Appointing Circuit Courts and for Enlarging the Power of the County Courts," N. C. Acts, 1738, C. O. 5/333, P. R. O.

<sup>7</sup> C. R., IV, 175.

<sup>8</sup> This period is the earliest in which there are sufficient records of the Assembly and lists of the justices for a survey (C. R., IV, *passim*). The membership of the Assembly is compiled in Robert D. W. Connor, ed., *A Manual*

the Assembly had the power to levy taxes, the legislator-justices were in a position to bargain with the governor in order to increase the powers of the county courts. The legislation of 1738/39 provides an example. In return for adopting an arrangement for collecting quitrents at the counties' expense, a major source of funds for the governor's salary, the governor assented to several laws extending the authority of the county court.

By 1750 the power and authority of the county court touched or controlled a large proportion of the activities and interests of the inhabitants within its jurisdiction. If a man desired to obtain Crown land for himself and his family, he ordinarily proved his rights before the local court and had a certificate forwarded to the governor and council. Should he buy land or cattle, he petitioned the court to probate the deed or bill of sale and to have it registered. To distinguish his cattle, horses, and hogs from those of his neighbors he had his cattle marks and brands recorded in the court minutes. When he and his neighbors wanted a road, they petitioned the court, or the county road commissioners if they lived in the southern part of the province. If he wished to establish an ordinary or a tavern at his house or to build a mill on a neighboring creek, he also submitted his petition to the court. And in the operation of these or other businesses he was required to use only weights and measures which had the approval of the county standard keeper. To collect his small debts he sued his debtor in the county court. He also petitioned the court to obtain a remedy for the service which an indentured servant failed or refused to perform.

An inhabitant fulfilled most of his public obligations under the supervision of officers nominated or appointed by the county court. His taxes, whether local or provincial, were paid to county officials. The constable annually reminded him to declare the number of his taxables; the nearest justice of the peace heard and recorded his declaration; the inspector of the county warehouse received the commodities he used in paying his taxes; and the sheriff accepted the inspector's notes as the equivalent of the money due. The sheriff or his deputy summoned a citizen to

attend court as a juror or witness and executed any judgment against him for his neglect or refusal to appear. When he voted in the election for members of the Assembly, he found the sheriff presiding.

The county court maintained its authority over an inhabitant's property and family even after his death. A relative or friend usually had his will proved before the county court and then qualified as executor. If there was no will, the court appointed an administrator and, if necessary, a guardian; and it supervised them in the exercise of their duties. Should the estate be too small for anyone to volunteer as guardian, the court bound the children out as apprentices.

During the period before 1750 the county court functioned as a unit of local government with remarkable effectiveness. It consisted of men whose prestige in the community arose from their wealth, ability, and training. Family connections were helpful in acquiring the appointment as a justice, but a recent settler who possessed desirable qualifications could also obtain the office. The agricultural economy based primarily upon small land holdings rather than upon large plantations promoted fewer distinctions between citizens than in neighboring colonies. As a result, the justices and their neighbors had similar interests and a common approach to the problems arising in the county. In the operation of the court these factors promoted a spirit of fairness and impartiality in its deliberations. Although some of the justices did not attend the court regularly, a majority did; and they discharged the duties of their office conscientiously. Under these conditions the county court, as an administrative body as well as a court of justice, adequately furnished the local government necessary in colonial North Carolina.

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Court of Chancery Minutes, 1694-1697.

These minutes are bound with the General Court Minutes of the same period.

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This reel includes a heterogeneous collection of papers relating chiefly to the General Court. The papers include orders, writs, petitions, certificates, dockets, etc.

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Bertie Court Dockets, 1725, 1738-1750.

Carteret Court Dockets, 1735-1750.

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These records include attachments, warrants, capiases, subpoenas, depositions, declarations, indictments, presentments, judgments, appeals, executions, bills of cost, bills of sale, deeds, promissory notes, petitions, inventories of estates, administrators' and guardians' bonds and accounts, apprentice bonds, officials' bonds, and powers of attorney. The collections entitled "County Papers," "Miscellaneous Papers," etc., contain many, if not all, of these types of records.

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